

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CENTER FOR A SUSTAINABLE
COAST, SIERRA CLUB, and
ALTAMAHA RIVERKEEPER,

Petitioners,

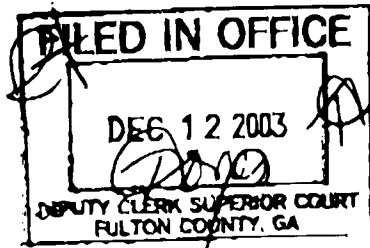
V.

COASTAL MARSHLANDS
PROTECTION COMMITTEE,
GEORGIA DEPARTMENT OF
NATURAL RESOURCES,

Respondents,

EMERALD POINTE DEVELOPMENT,
LLC,

Respondent/Intervenor.



CIVIL ACTION FILE NO.
2002CV52219

ORDER REMANDING CASE TO
COASTAL MARSHLANDS PROTECTION COMMITTEE

This matter is before this Court on Petitioner's Petition for additional judicial review. For the reasons asserted herein, the matter is hereby reversed and remanded to the Coastal Marshlands Protection Committee (CMPC) for further proceedings consistent with this order.

Respondent-Intervenor Emerald Point, LLC, seeks to develop a residential community on three hammocks located in the midst of marshlands in Chatham County Georgia. Respondent-Intervenor was granted a permit by the CMPC to build three bridges across state-owned marshlands to access the three islands owned by Emerald Point. In granting the permit, the CMPC reviewed the application only in regard to direct impacts on the marsh caused by the construction of the bridges and whether those impacts violated the public interest considerations of the Coastal Marshland Protection Act (CMPA) O.C.G.A. 12-5-280 et seq. The CMPC did not consider the impact of the development in its entirety on the marshlands. Petitioners challenged the granting of the

permit and a hearing was held in accordance with the Administrative Procedure Act O.C.G.A. 50-13-1 et seq.

The Administrative Law Judge (ALJ) presided over a three day evidentiary hearing. The ALJ determined, as did the Committee before her, that the primary project under the permitting jurisdiction of the CMPA was the building of the bridges. Thus, consideration was only given to the project insofar as it bore upon the bridges. The ALJ affirmed the decision of the CMPC granting Respondent-Intervenor the permit. Petitioners appealed to this Court.

This Court determined that the ALJ erred by analyzing the propriety of issuing the permit for the bridges without considering the larger purpose of the project. While the purpose of the CMPA does not include the authority to regulate upland development, the legislature did not intend for the CMPA to be so narrowly construed as to hinder the Committee from considering the impact upon the marsh of any proposed project in its entirety. Thus, this Court reversed the decision of the ALJ and remanded the matter for further proceedings or review based upon consideration of the project in its entirety.

On remand, the ALJ declined to conduct further evidentiary proceedings. Instead, she reviewed the record, placed additional conditions on the permit, and purported to affirm the decision of the Committee to issue the permit. The record reflects that the conditions added by the ALJ were not a part of the original permit. The conditions were added only after remand. Their sufficiency was not litigated at the original hearings before the ALJ. Petitioners again appealed.

Petitioners argue that the ALJ erred by adding new conditions to the permit without affording them an opportunity to challenge their sufficiency either through conducting further evidentiary proceedings or remanding the matter back to the Committee. Respondents counter that the conditions added to the permit by the ALJ after remand were not new conditions, but were conditions which were familiar to Petitioners and were a part of a settlement agreement between Respondent-Intervenor Emerald Point and parties not associated with this litigation regarding the same marsh property.

The only issues raised at the hearings before the ALJ regarding the conditions contained in the settlement agreement were 1) that the conditions were not binding on Respondents and 2) that the settlement agreement conditions could be revised upon

consent of the parties to the agreement. Petitioners had no notice that the sufficiency of the conditions in the settlement agreement was at issue prior to the decision of the ALJ after remand. Insofar as the ALJ imposed conditions on the original permit without a hearing as to the sufficiency of those conditions, the Court erred as a matter of law. A full and fair opportunity to litigate substantive issues is fundamental to our notions of fairness and due process. The affirmance of a permit based upon the imposition of post hoc conditions without a hearing as to those conditions is contrary to the basic principles of due process.

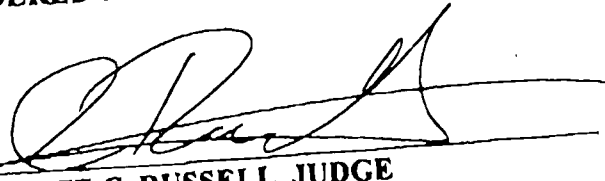
The Georgia General Assembly has determined that the coastal marshlands of Georgia are a vital natural resource essential to maintain the health, safety, and welfare of the citizens of the state which are costly, if not impossible, to reconstruct or rehabilitate once they are adversely affected, and that management and regulation of the coastal marshlands is important and essential to ensure the values and function of the marshlands are not impaired. O.C.G.A. 12-5-281. Such an irreplaceable resource should not be altered without full consideration of the matter by the body charged with protection of the marshlands. For that reason this matter is remanded to the Committee for full review consistent with this Court's orders.

On remand, the Committee is to determine, after conducting evidentiary proceedings consistent with the procedures prescribed by the CMPA, whether authorizing a permit for a portion of the project (the bridges) is in the public interest. Consistent with this Court's previous ruling, the Committee is to consider whether the project in its entirety will unreasonably harm the public interest as identified in the CMPA. In determining whether authorizing the permit is appropriate, the Committee may also consider the sufficiency of any proposed permit conditions and whether "feasible alternative sites" exist for the project.

The parties have raised the issue of the scope of the Committee's review of "feasible alternative sites." It appears from the record that the interpretation of O.C.G.A. 12-5-286(h) as it relates to the phrase, "feasible alternative sites," has not yet been addressed by the Committee. This Court declines to decide the appropriate scope of the Committee's review as to this issue. Administrative bodies are entitled to deference in interpreting the meaning and scope of acts which they administer. Accordingly, the

Court will defer to the Committee to give it an opportunity to utilize its expertise to determine the interpretation of the statutory language in the first instance. Nothing in this order shall be construed to prevent the Committee from considering any other matters it deems necessary to making a determination as to the propriety of reissuing the permit in question.

SO ORDERED this the 12th day of December, 2003.



CONSTANCE C. RUSSELL, JUDGE
Fulton County Superior Court