Opinion: Why a bill expediting private ownership of Georgia’s salt marsh is a bad idea

'Passing this bill would hamper the State’s ability to employ necessary due diligence in evaluating claims affecting public trust lands, thus increasing the likelihood of dubious claims succeeding'

By Karen Grainey

REPRESENTATIVE Jesse Petrea has introduced state legislation (HB 748) that will shift the burden of proof to the State when landowners wish to assert ownership rights to coastal marshlands.

Common law public trust doctrine holds that the lands regularly submerged by normal tides are not private property.
the ebb and flow of the tide are owned by the State and held in trust for the 
benefit of the people. In 1981, the Georgia legislature codified this principle in 
the Protection of Tidewaters Act which establishes the State of Georgia as the 
owner of the beds of all tidewaters within the State, except where private title 
can be traced to a valid British Crown or State land grant.

It is appropriately difficult for property owners to successfully produce the 
documentation needed to trace an unbroken chain of title to a Crown or State 
grant. Most of these grants date back to as far as 250 years ago, when Georgia 
was a British colony. Among the requirements for proving ownership status, 
the grants must still exist, be legible, and must specifically convey tidewaters. 
Most Crown grants were subject to stipulations such as the cultivation of rice, 
mandating that the property reverts to the Crown if grantees should fail to 
adhere to the terms.

Currently, marsh-front property owners can petition the State to recognize 
their ownership of marshlands by submitting supporting documents to the 
Georgia Department of Law for official verification. HB 748 would place an 
arbitrary 60-day time limit on the Attorney General to verify the claims. If the 
Attorney General cannot decide within this short period, the law would 
consider the claim valid by default putting the onus on the State to prove in 
court that the petitioner does not own public trust marshland.

Passing this bill would hamper the State’s ability to employ necessary due 
diligence in evaluating claims affecting public trust lands, thus increasing the 
likelihood of dubious claims succeeding.

Some might wonder if unleashing a potential land grab of Georgia’s coastal 
marshlands matters since Crown grant marshlands are covered by the Coastal 
Marshlands Protection Act (CMPA). It matters if a constituency of private 
landholders grows large enough to successfully lobby for policy changes that 
weaken environmental regulations perceived to impinge on their property 
rights.

But beyond that, there’s another clue as to why it matters in the bill itself, a 
measure that Mr. Petrea has dubbed the “Coastal Marshlands Restoration Act.” 
A careful reading of the text reveals a shell game that distracts attention away 
from the bill’s primary objective to fast-track claims to private ownership of 
marshlands by linking it to marsh restoration.

There is only one way for a private owner of tidal wetlands to directly profit 
from marsh preservation. It’s called wetlands mitigation banking, a 
government-administered program whereby “certified” landowners 
preserve, restore, enhance, or create wetlands on their own property and sell 
credits to anyone whose activities damage or destroy wetlands located 
elsewhere. The US Army Corps of Engineers requires mitigation as 
compensation for all wetlands destruction they authorize under the Clean 
Water Act. To fulfill this requirement, those who are granted Corps permits 
frequently purchase wetlands mitigation-bank credits.

Keep in mind that Georgia’s coastal marshlands are already protected by state 
law, so there is no public interest justification for making it easier for private 
individuals to profit from wetlands preservation that enables wetlands 
destruction elsewhere. The result is a net loss of wetlands. Mitigation only
makes sense as a conservation tool when land that would otherwise remain eligible for development is preserved.

The bill emphasizes restoration but it’s unclear what is meant by this or how legitimate the need is. The bill also never explains why opportunists motivated by financial gain from a contrived market in mitigation credits are the people we should entrust with restoring what state law recognizes as “a vital area of the state” that is “essential to maintain the health, safety, and welfare of all the citizens of the state.”

(A future post will delve into the US Army Corps of Engineers’ administration of the wetlands mitigation program.)

Karen Graney is the assistant director of Center for a Sustainable Coast, a nonprofit organization dedicated to improving the responsible use, protection, and conservation of coastal Georgia’s resources - natural, historic, and economic.