

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



FILED
OSAH

FEB 21 2014

K. Westray

Kevin Westray, Legal Assistant

**BULL RIVER BLUFF PROPERTIES,
LLC,** :

Petitioner, :

v. :

**COASTAL MARSHLANDS
PROTECTION COMMITTEE,** :

Respondent, :

**CENTER FOR A SUSTAINABLE
COAST, OGEECHEE RIVERKEEPER,
and SAVANNAH RIVERKEEPER,** :

Respondents-Intervenors. :

Docket No.:
OSAH-BNR-CRD-CM-1408563-60-Miller

FINAL DECISION

For Petitioner:

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William G. Maston, P.C.

For Respondent:

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For Intervenors:

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I. SUMMARY OF PROCEEDINGS

On July 20, 2013, Bull River Bluff Properties, LLC (“Applicant”) initiated the instant proceeding by filing a Petition for Hearing (“Petition”),¹ challenging a decision by the Coastal

¹ The Petition was referred to the Office of State Administrative Hearings on September 4, 2013.

Marshlands Protection Committee (“Committee”) to deny its application for a permit to construct and maintain a marina on and over state-owned marshlands protected by the Coastal Marshlands Protection Act (“CMPA”).² By Order dated September 30, 2013, the Center for a Sustainable Coast, Ogeechee Riverkeeper, and Savannah Riverkeeper (collectively, the “Coastal Groups”) intervened in the action.

On December 9, 2013, the Court denied a motion for summary determination that was filed by the Coastal Groups and joined by the Committee. The evidentiary hearing took place thereafter, on December 16 and 17, 2013, in Savannah, Georgia.³

After consideration of the evidence and arguments of the parties, and for the reasons stated below, the Court finds that the Applicant did not meet its burden of demonstrating that existing public facilities and/or nonmarshland sites are insufficient to meet its water-related needs, as mandated by the CMPA. Accordingly, the Committee’s decision to deny the Applicant’s permit application is **AFFIRMED**.

II. STATUTORY AND REGULATORY FRAMEWORK

The CMPA expressly recognizes that Georgia’s coastal marshlands are a valued recreational and commercial resource, as well as “a vital natural resource system” that is “among the richest providers of nutrients [for marine life and wildlife] in the world.” O.C.G.A. § 12-5-281. The marshlands “provide a nursery for commercially and recreationally important species of shellfish and other wildlife, provide a great buffer against flooding and erosion, and help

² The present case is the second time the Applicant’s proposed marina project has appeared before this Court. In the prior proceeding, the Coastal Groups appealed the Committee’s December 2011 decision to grant a permit for the marina. On December 10, 2012, the Court granted summary determination in favor of the Coastal Groups, concluding that the permit should be reversed because the Applicant had not submitted the mandatory needs assessment with its permit application. Ctr. for a Sustainable Coast v. Coastal Marshlands Protection Committee, 2012 Ga. ENV. LEXIS 19 (Dec. 10, 2012) (“Final Order”). The case at bar, although it involves the same marina project, is based on a different permit application and presents a different legal issue.

³ The hearing record closed on January 22, 2014, upon receipt of the parties’ proposed Findings of Fact and Conclusions of Law.

control and disseminate pollutants.” Id. The CMPA’s purpose is to manage and preserve the marshlands for present and future generations. Id.

To facilitate this mission, the CMPA regulates marshland development by requiring the issuance of a permit before certain marsh-disturbing activities may take place. Pursuant to O.C.G.A. § 12-5-286(a), “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” Thus, the Committee is charged with evaluating permit applications and issuing permits subject to the requirements of the CMPA. Id.

Under O.C.G.A. § 12-5-286(h), the Committee may issue a permit only if the permit applicant demonstrates “that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist.” In addition, “[t]he amount of marshlands to be altered must be minimum in size.” O.C.G.A. § 12-5-288(b). Regulations promulgated by the Board of Natural Resources (“BNR”) further require that when a permit applicant wishes to construct a marina, “[a] needs assessment must be submitted to justify the size of the proposed marina.” Ga. Comp. R. & Regs. 391-2-3-.03(6)(c).

Of particular significance in this case is the statutory directive found at O.C.G.A. § 12-5-288(a), which provides, “If the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted pursuant to Code Section 12-5-286.”

III. FINDINGS OF FACT

The Bull River Bluff condominium community ("Bull River Bluff") is a 144-unit complex located along Bull River in the eastern part of Chatham County, Georgia. It has been in operation since 1986 and has never had an on-site marina.⁴ (Exhibit J-18 at 1.) On February 28, 2013, the Applicant filed a permit application with the Committee, seeking a CMPA permit to construct a private community marina exclusively for the use and enjoyment of Bull River Bluff residents. (Exhibits J-2, J-23.) The central purpose of the proposed marina is to give Bull River Bluff residents a place to dock their boats. (Exhibit J-18 at § 18.) The marina project's secondary purposes include offering residents a place to fish, crab, shrimp, swim, kayak, and hold social gatherings. (T. 162, 169-70, 204, 211-12, 231, 256.) In addition, the Applicant has identified certain other advantages of an on-site marina, such as enhanced security, a resident dockmaster, parking for boat trailers, temporary dockage space for guests, ownership of boat slips, accessibility for disabled individuals, and greater convenience for residents. (T. 71-72, 124, 155-57, 160, 171-74, 190-91, 203-07, 213-15; Exhibit J-18 at § 18.)

A. Overview of Proposed Marina

The marina, as proposed by the Applicant, will be located approximately 370 feet southeast of Bull River Marina, a boating facility available for public use. (T. 375-76; Exhibit J-31D.) It will provide dockage space for 45 boats and 10 jet skis or jon boats. (Exhibits J-16, J-18, J-19 at 5.) The structure will consist of a 6-foot by 978-foot fixed walkway, beginning in a common area of the development and extending over the marsh until it terminates at a 14-foot by 28-foot fixed covered platform. (T. 49, 367; Exhibits J-16, J-18, J-19 at 5.) A 4-foot by 40-foot ramp will connect the platform to a 6-foot by 298-foot main floating dock, which will in turn

⁴ In 1988, the Applicant's original builder obtained a permit for a 122-slip marina. The builder died, however, and the project never came to fruition. The permit expired in 1992. (T. 31-32, 280-81.)

connect to three perpendicular floating docks. The two exterior docks will measure 6 feet by 162 feet, while the interior dock will measure 6 feet by 86 feet. (Exhibits J-16, J-18, J-19 at 5.) A total of 22 finger slips will be configured to provide 45 individual boat slips, consisting of 12 twenty-foot slips, 19 thirty-foot slips, 6 forty-foot slips, and 8 fifty-foot slips, plus a designated area for loading and unloading. (T. 51, 367; Exhibits J-16, J-18, J-19 at 5.) The marsh-facing side of the main floating dock will provide floating platforms for the docking of 10 jet skis and/or jon boats. (Exhibits J-16, J-18, J-19 at 5.)

The Applicant intends to finance the construction of the marina, which is projected to cost between \$700,000.00 and \$800,000.00, by selling individual boat slips at a cost ranging from \$15,000.00 to \$23,000.00. (T. 33-35, 83-85; Exhibit J-16.) Only Bull River Bluff condominium owners will be eligible to purchase boat slips. (Exhibit J-16 at 3.) When construction is complete, the Bull River Bluff Community Dock Association will assume responsibility for maintaining the marina, through monthly dues paid by slip owners and other residents who wish to use the marina for non-boating activities. (T. 33-35; Exhibits J-11, J-16 at 4.)

B. Needs Assessment

In conjunction with its permit application, the Applicant prepared and submitted a needs assessment to the Committee, as required by BNR rules. (Exhibit J-18 at § 18.) Because the proposed marina is intended primarily as a location for Bull River Bluff residents to store their boats, the needs assessment focused on the residents' demand for boat slips and the supply of available slips in the vicinity. (Exhibit J-18 at § 18.)

1. Residents' Demand for Boat Slips

According to the needs assessment, a total of 48 Bull River Bluff residents are current boat owners who wish to purchase slips at the proposed marina. (Exhibit J-18 at § 18.) The needs assessment further asserts that an estimated 16 additional residents intend to purchase boats in the future. (Exhibit J-18 at § 18.) However, this information is incorrect.

The needs assessment's assertions regarding boat slip demand were purportedly based on "dock slip information" forms completed by Bull River Bluff residents at a meeting that took place in 2009 or 2010. (T. 107-10, 147-49; Exhibit I-1.) Despite this, the needs assessment did not include copies of the dock slip information forms, nor did it identify the individuals who sought to purchase boat slips. (Exhibit J-18 at § 18.) The Applicant likewise did not offer such evidence at the hearing, where it presented the testimony of only six individuals who hope to purchase boat slips.⁵ (T. 155-56, 169, 204, 248, 275, 281-82.) In fact, beyond this testimony, the only evidence concerning residents' demand for boat slips was presented by the Coastal Groups, which submitted the dock slip information forms upon which the Applicant purportedly relied in completing its needs assessment. (Exhibit I-1.) These forms discredit, rather than support, the Applicant's assertions of need. More specifically, only 40 dock slip information forms exist, and only 27 of the forms express the resident's clear intent to purchase a boat slip.⁶ Id. Further, only 11 forms indicate that the resident currently owns a vessel. Id. No resident has placed a deposit or signed a binding agreement to purchase a slip. (T. 86-87, 107, 146.)

⁵ Instead, the Applicant evidently seeks to rely upon certain affidavits of Bull River Bluff residents submitted in conjunction with its response to the Coastal Groups' Motion for Summary Determination. See Applicant's Proposed Final Order, filed January 14, 2014, at 4. However, these affidavits were not offered as hearing exhibits and are not part of the record of the evidentiary hearing. Moreover, they contain the hearsay statements of individuals who did not testify at the hearing and were not subject to cross-examination by opposing counsel. They are therefore inadmissible. See O.C.G.A. § 24-8-802.

⁶ On the forms, eight residents expressed interest in using the marina exclusively for non-boating purposes. Four other forms were ambiguous, while one form was duplicative. (Exhibit I-1.)

2. Supply of Available Boat Slips at Existing Public Marinas

The needs assessment also provides the Committee with information regarding existing boating facilities in the area. The Applicant identifies 42 marinas and boat ramps in the vicinity of its proposed marina, but contends that these facilities are unable to meet its needs. (Exhibit J-18 at § 18.)

Of the facilities identified in the needs assessment, Bull River Marina is located in closest proximity to the Applicant's proposed marina. Id. Bull River Marina is 370 feet upriver from the proposed marina,⁷ or between 1 and 1.5 miles from the Bull River Bluff development via surface streets. (T. 178-79, 205.) Bull River Bluff residents may also walk or bike to Bull River Marina on a path that leads from the development to the parking lot of Bull River Marina.⁸ (T. 377.) In fact, residents of Bull River Bluff at times dock their boats at Bull River Marina. (T. 209; Exhibit I-2 at ¶ 4.) Due to a recent expansion of Bull River Marina, the facility now has space to dock more than 30 additional boats averaging 25 feet in length. (Exhibit I-2 at ¶ 5.)

In addition to Bull River Marina, one Intervenor has identified eleven other marinas in the Chatham County area that offer boating services to the public. (T. 350-51; Exhibit I-3 at ¶ 4.) On November 8, 2013, the Savannah Riverkeeper, Tonya Bonitatibus, visited nine of these local marinas and conducted an informal survey of available boat slips. (Exhibit I-3 at ¶¶ 1, 4-5.) On that date, she identified available space to accommodate 90 to 100 boats averaging 25 feet in length. (Exhibit I-3 at ¶¶ 5-25.) Although Ms. Bonitatibus' survey was conducted during the

⁷ When the Committee considered the Applicant's project at its meeting on June 13, 2013, Bull River Marina was 418 feet upriver from the proposed marina. Since then, Bull River Marina has expanded its facilities and dockage space in accordance with a previously-issued permit. (T. 375-376; Exhibits J-31C, J-31D.)

⁸ Bull River Bluff residents are known to walk and ride bicycles on the path, although it may not be suitable for use by unaccompanied children or elderly individuals due to occasional vehicle traffic and the absence of a smooth, paved surface. (T. 158-59, 221, 258.) Additionally, because the path is not lighted, residents' use is likely limited to daylight hours. (T. 158, 258.)

fall, which is a less active time for boating than the summer months, it is nonetheless some evidence that dock space is also available at area marinas other than Bull River Marina. (T. 273, 354-55, 357.)

B. Secondary Purposes and Benefits

The Applicant asserts that some Bull River Bluff residents intend to use the proposed marina for non-boating activities, such as fishing, crabbing, shrimping, swimming, kayaking, and gathering for social events. (T. 162, 169-70, 204, 211-12, 231, 256.) The Applicant further contends that the proposed marina will offer certain perceived benefits that cannot be found at existing public facilities, including enhanced security, a resident dockmaster, parking for boat trailers, temporary dockage space for guests, ownership of boat slips, accessibility for disabled individuals, and greater convenience for residents. (T. 71-72, 124, 155-57, 160, 171-74, 190-91, 203-07, 213-15; Exhibit J-18 at § 18.) These ancillary purposes and benefits are addressed in turn, below.

1. Fishing, Crabbing, and Shrimping

The Applicant intends to allow fishing, crabbing, and shrimping at the proposed marina. Although no area has been designated specifically for these activities, residents will be permitted to use their boat slips and/or the ends of the floating docks for these purposes. (T. 104-07; Exhibit J-19 at 5.) This means that fishing, crabbing, and shrimping activities would take place in areas where boats are traveling. Id. This arrangement is undesirable, as vessel traffic is likely to interfere with these non-boating activities. (T. 211.) Further, residents may satisfy their desires to fish, crab, and shrimp by accessing either a tidal creek adjacent to the property or existing public facilities in the area. (T. 278, 332, 371-72; Exhibit I-2 at ¶ 7.)

2. Kayaking

The Bull River Bluff development has a secure kayak storage facility that holds fifteen to twenty kayaks for residents' use and enjoyment. (T. 40, 240.) Currently, residents are able to access Bull River at high tide by launching their kayaks in the adjacent tidal creek. (T. 240.) Kayaking is also available at Bull River Marina. (Exhibit I-2 at ¶ 7.)

3. Swimming

Although the Applicant states that swimming will be allowed at its proposed marina, there is no credible evidence that the project is suitable for this purpose. Swimming at the marina would be unsafe, due to the speed of the current on Bull River and the risks associated with swimming in an area used by motorized vessels. (T. 88, 191, 212, 333; Exhibit I-2 at ¶ 8.) In fact, the swimming area identified by one of the Applicant's witnesses, on the marsh-facing side of the main floating dock, is actually designated for jet skis and jon boats. (T. 105-06, 212, Exhibit J-19 at 5.) Swimming is also not an activity that requires a marshland site. Residents may swim in the existing community swimming pool located on the upland portion of the condominium development. (T. 386.)

4. Social Gatherings

Like swimming, social gatherings do not require a marshland site and can be accommodated at Bull River Bluff's existing swimming pool and community space. (T. 277, 372, 386.) Further, due to the relatively small size of the covered platform, it is unlikely that the proposed marina could safely accommodate large community events. (T. 49, 231; Exhibit J-19.)

5. Security

The Applicant asserts that its proposed marina will offer greater security than is found at other public facilities in the area. (T. 61-63.) For example, the Applicant hopes to install a gate

with a biometric security system and live feed cameras, although these options have not been definitively decided. (T. 61-63, 232-33.) At Bull River Marina, where the only reported security issue is a small number of petty thefts, a security camera is present at the entrance to its store, and the future installation of a security gate is under consideration. (T. 62, 322, 336.) At least one other area marina, Tybee Island Marina, also has security cameras. (T. 193-94.) Moreover, a security gate would not stop thieves from arriving at the Applicant's marina by sea. (T. 377.)

6. Dockmaster

The Applicant intends to have a dockmaster, David Scoggin, who resides at the Bull River Bluff development and also serves as its property manager. (T. 63, 232.) However, Mr. Scoggin also holds a job at Comcast and will not be routinely on-site, although he will be accessible by telephone. (T. 243, 247.) Mr. Scoggin has never worked at a marina and has no experience addressing situations such as boat fires, sinking boats, or fuel spills. (T. 251-52.) In contrast, Bull River Marina has both a full-time, experienced dockmaster and a full-time dock hand who work on-site at its facility. (T. 320-21; Exhibit I-2 at ¶¶ 1-3.) The dockmaster is available by telephone around the clock and sometimes sleeps aboard his boat, which is docked at the marina. (T. 318-19, 339.)

7. Parking

The Applicant contends that a significant distinguishing feature of its proposed marina, as compared to Bull River Marina, is that parking for boat trailers will be available at the condominium development. (Exhibit J-18 at § 18.) Regardless of the veracity of this statement, there is simply no reason for either marina to offer trailer parking, as neither marina has (or will have) a boat launch facility.⁹ (T. 118-19; Exhibit J-19.) Bull River Marina offers parking for 60

⁹ Despite this fact, at least one of the Bull River Bluff residents who testified at the hearing was under the impression that the proposed marina would offer a boat launch. (T. 290.) The Applicant's needs assessment also

or more vehicles, which has been sufficient to accommodate the facility's patrons. (T. 339-40; Exhibit I-2 at ¶ 5.)

8. Guest Boat Access

The Applicant's proposed marina will provide one 25-foot boat slip for use by guests of Bull River Bluff residents, without charge. (T. 71-72, 124.) Bull River Marina allows temporary docking of transient boats, but charges a parking fee unless the guest uses a rented slip with the renter's permission. (T. 333-34.)

9. Slip Ownership

The Applicant proposes to sell ownership rights to the boat slips in its marina and to maintain the marina as a non-profit entity. (T. 72-74.) Condominium owners will thereby avoid the cost of renting boat slips at other marinas, and it is also expected that boat slip ownership will increase their property values. (T. 74-76.) Nonetheless, it must be noted that Bull River Bluff residents will expend significant sums to purchase slips and maintain the proposed marina. (T. 33-35, 83-84; Exhibit J-16.) The average monthly rental cost for a slip at an area marina is approximately \$11.00-\$12.00 per foot. (T. 196.)

10. Access by Disabled Individuals

According to the Applicant, its proposed project is accessible to disabled individuals who might wish to use the marina for boating and other water-related activities. (T. 40, 71.) There is little evidence in the record regarding precisely what this means, beyond ensuring that handrails are present on the walkway, with clearance of 36 inches from handrail to handrail. (T. 88-89.) Therefore, it is unclear whether the proposed project will provide an enhanced degree of accessibility. (T. 289.)

cites the absence of a boat launch at Bull River Marina as a reason for the Committee to approve its permit application, even though its proposed project did not include a boat launch. (Exhibit J-18 at § 18.)

11. Convenience

It is undisputed that residents of Bull River Bluff would find it more convenient to use the proposed on-site marina, as compared with Bull River Marina¹⁰ or other existing public facilities, due to its close proximity to their homes. (T. 72, 160, 169, 206, 257.)

IV. CONCLUSIONS OF LAW

The Applicant has challenged the Committee's denial of its application for a CMPC permit to build a marina over state-owned marshlands. The proceeding is *de novo*, and the evidence presented at the hearing is not limited to that which was considered by the Committee prior to denial of the application. Ga. Comp. R. & Regs. 616-1-2-.21(3); see also Coastal Marshlands Protection Comm. v. Altamaha Riverkeeper, 315 Ga. App. 510, 512-13 (2012); Longleaf Energy v. Friends of the Chattahoochee, 298 Ga. App. 753, 768 (2009) (the administrative law judge is required "to consider the applicable facts and law anew, without according deference or presumption" to the agency decision). As the party challenging the Committee's decision, the Applicant bears the burden to prove, by a preponderance of the competent evidence presented at the hearing, that the Committee erred in denying the permit. Ga. Comp. R. & Regs. 616-1-2-.07(1), .21(4). In this case, the Applicant failed to meet its burden.

As previously noted, the CMPA requires that "[i]f the project . . . can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted pursuant to Code Section 12-5-286." O.C.G.A. § 12-5-288(a) (emphasis added). Reading these clauses together, the first inquiry is whether the applicant's need for a

¹⁰ Bull River Marina has offered to provide Bull River Bluff residents with a private dockage area at its facility. (Exhibit J-25 at 1.)

marina can be fulfilled through the use of existing public facilities.¹¹ The second inquiry is whether, if the need for the project can be satisfied by existing public facilities, the applicant has shown special circumstances that justify permit issuance even though a permit “usually should not be granted” under O.C.G.A. § 12-5-288(a).

After hearing and evaluating all of the evidence, the Court finds, first, that the overriding purpose of the Applicant’s proposed marina is to provide a place for Bull River Bluff residents to dock their boats. This project need can be satisfied by the use of an existing public facility, specifically Bull River Marina. All other needs and desires identified by the Applicant, whether in its needs assessment or at the evidentiary hearing, are ancillary to its primary need for a place to dock boats.¹² The Court further finds, after considering the secondary purposes and benefits of the proposed marina, that the Applicant has not shown any special circumstances that would support the issuance of a permit, given that a permit “usually should not be granted” when an existing public facility can fulfill a permit applicant’s need for the project.

A. The Central Purpose of the Applicant’s Project Can Be Satisfied by Bull River Marina.

It is axiomatic that the primary purpose of any marina project is to provide a place for individuals to dock boats that are not currently in use, thereby facilitating access to the waterways of this state. Thus, to determine whether the Applicant’s need for the project can be satisfied by existing public facilities, the initial inquiry centers on whether a sufficient quantity of boat slips is available within reasonable proximity of the proposed project.

¹¹In addition, a permit applicant must submit a needs assessment to “justify the size of the proposed marina.” Ga. Comp. R. & Regs. 391-2-3-.03(6)(c). Indeed, if existing public facilities can satisfy the applicant’s need, the applicant cannot justify a marina of any size.

¹² While these ancillary purposes may add to the functionality or desirability of a marina, they cannot serve as independent justification for the project. For example, although fishing, crabbing, shrimping, swimming, and gathering are desirable activities, they certainly do not require the construction of a 45-slip marina with additional space for 10 jets skis and/or jon boats.

Here, the evidence of record demonstrates that Bull River Marina¹³ is able to fulfill the Applicant's need for boat slips. As noted above, Bull River Marina is currently able to accommodate more than 30 additional boats. At the hearing, only six Bull River Bluff residents testified that they intend to purchase boat slips at the Applicant's proposed marina, and none are legally obligated to do so. Furthermore, even if the dock slip information forms are considered competent evidence of a demand for 27 slips, it is undisputed that Bull River Marina has a sufficient supply of slips to meet this demand. Finally, Bull River Marina is located just 370 feet from Bull River Bluff along the water and within a short drive, bike ride, or even walk of the condominium complex. The Court concludes, therefore, that Bull River Marina is able to meet the Applicant's demand for boat slips within reasonable proximity of the Bull River Bluff development.

B. No Special Circumstances Support the Issuance of a Permit.

As detailed in the Findings of Fact, above, the Applicant has identified a multitude of secondary purposes and benefits of its proposed marina. These include opportunities for non-boating activities, as well as other features that are expected to increase residents' use and enjoyment of the marina. However, these ancillary purposes and benefits, to the extent they cannot be satisfied at a nonmarshland site or existing public facilities, are insufficient to support issuance of the permit.

Many of the secondary purposes of the proposed marina do not require access to the marsh. As explained in the Findings of Fact, above, Bull River Bluff residents are able to swim at the community pool and hold social gatherings at the pool or other common areas. In

¹³ It is undisputed that Bull River Marina is a public marina open to members of the public on an ongoing basis. The use of such facilities ensures that marina services are provided to the public while ensuring minimum alteration of the marshlands. See O.C.G.A. § 12-5-288(b).

addition, they can use the tidal creek adjacent to the property for fishing, shrimping, and crabbing. Kayakers also use the tidal creek to access Bull River during high tide.

Other ancillary purposes can be fulfilled at existing public facilities in the vicinity. For example, fishing, crabbing, shrimping, and kayaking can take place at Bull River Marina. Alternatively, these activities can take place at other public piers that are not used to dock boats. Bull River Marina can also meet the Applicant's need for an on-site dockmaster and temporary dockage space for guests.

Some of the Applicant's assertions regarding the distinguishing features of its proposed marina are not supported by the record. For instance, since neither Bull River Marina nor the Applicant's proposed marina has a boat launch, there is no reason for either facility to provide parking for boat trailers. Similarly, the Court is not persuaded that accessibility for disabled individuals is a factor that distinguishes the proposed marina from Bull River Marina.

Finally, the Applicant's stated needs for enhanced security, ownership of boat slips, and greater convenience simply do not justify the issuance of a permit. As a preliminary matter, the Court notes that the security measures proposed by the Applicant cannot secure the marina at the water's edge, especially given the distance of the marina from the upland area of the development. Moreover, these stated "needs" are, in fact, merely desires of Bull River Bluff residents to increase the value of their property, maintain exclusive control of the place where they dock their boats, and ensure an optimally convenient location to engage in boating activities. This Court does not discount these desires, which are likely shared by many residents of the coastal area. However, the CMPA requires a balancing of private and public interests. See O.C.G.A. §§ 12-5-286, 12-5-288.

Here, the Applicant has failed to demonstrate that its asserted needs justify the significant alteration of the coastal marshlands that would result from the construction of a 45-slip marina with a walkway of nearly 1,000 feet. The overriding purpose of the proposed marina is to provide dock space for boats owned by residents of Bull River Bluff – a need that can clearly be met by Bull River Marina. Further, although the Applicant has identified other purposes and benefits of the project, nearly all of these secondary purposes can be satisfied through use of a nonmarshland site or existing public facilities. To grant a permit based on the few ancillary purposes that remain would undermine the CMPA’s requirement that “a permit usually should not be granted” where the project “can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities.” O.C.G.A. § 12-5-288(a).

V. DECISION

For the foregoing reasons, the Committee’s denial of the Applicant’s application for a permit to construct and maintain a marina on and over state-owned marshlands protected by the CMPA is hereby **AFFIRMED**.

SO ORDERED, this 20th day of February, 2014.



KRISTIN L. MILLER
Administrative Law Judge