

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CENTER FOR A SUSTAINABLE COAST,
INC.

Plaintiff,

v.

THE UNITED STATES ARMY CORPS
OF ENGINEERS, Lieutenant General
TODD T. SEMONITE, in his official
capacity as Commanding General of the
U.S. Army Corps of Engineers, Colonel
DANIEL HIBNER in his official capacity
as District Commander of the Savannah
District, and TUNIS McELWAIN, in his
official capacity as Chief of the
Regulatory Branch of the U.S. Army
Corps of Engineers,

Defendants.

Docket No: 4:18-cv-00254-RSB-JEG

ALTAMAHA RIVERKEEPER and
ONE HUNDRED MILES,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS
OF ENGINEERS; Lieutenant General
TODD T. SEMONITE, in his official
capacity as Commanding General of the
U.S. Army Corps of Engineers; Colonel
DANIEL HIBNER in his official capacity

Docket No: 4:18-cv-00251-JRH-JEG

as District Commander of the Savannah District; and TUNIS McELWAIN, in his official capacity as Chief of the Regulatory Branch of the U.S. Army Corps of Engineers,

Defendants,

and

SEA ISLAND ACQUISITION, LLC,

Applicant for Intervention.

CONSENT MOTION FOR CONSOLIDATION OF ACTIONS

Pursuant to Rule 42 of the Federal Rules of Civil Procedure, Plaintiffs, with the consent of Defendants¹, in the above-captioned cases jointly submit this Consent Motion to consolidate these actions, *Center for a Sustainable Coast, Inc. v. The United States Army Corps of Engineers, et al.*, No. 4:18-cv-00254-RSB-JEG (November 2, 2018), with *Altamaha Riverkeeper and One Hundred Miles v. The United States Army Corps of Engineers, et al.*, No. 4:18-cv-00251-JRH-JEG (October 31, 2018), currently pending before the Honorable J. Randal Hall. The cases have been marked as related cases (*See Center for a Sustainable Coast* Dkts. 1, 1-1 and *Altamaha Riverkeeper* Civil Docket form), and Defendants consent to the consolidation of the cases. Consolidation of the two cases is sought because the cases both challenge the same permit, involve almost identical questions of law, and it

¹ Counsel for Plaintiff Center for a Sustainable Coast has conferred with Defendants' counsel, who has confirmed that Defendants do not oppose consolidation. As a courtesy, Counsel for Plaintiff Center for a Sustainable Coast has also provided notice of the consent motion for consolidation to Proposed Intervenor in the *Altamaha Riverkeeper* matter.

would be in the best interest of judicial economy to avoid the unnecessary costs, recourse and delays that would result in the cases moving forward separately. In support hereof, is a brief supporting memorandum, which is being filed concurrently.

Respectfully submitted this 3rd day of December, 2018.

<p>WEISSMAN, PC</p> <p><i>/s/ Kasey Sturm</i> Kimberly [Kasey] A. Sturm GA Bar No. 690615</p> <p>One Alliance Center, 4th Floor 3500 Lenox Road Atlanta, Georgia 30326 <i>Counsel for Plaintiff Center for a Sustainable Coast, Inc.</i></p>	<p>SOUTHERN ENVIRONMENTAL LAW CENTER</p> <p><i>/s/ William W. Sapp</i> William W. Sapp Georgia Bar No. 626435 Megan Hinkle Huynh Georgia Bar No. 877345 <i>Admitted pro hac vice</i> Bob Sherrier Georgia Bar No. 979890 <i>Pro hac vice motion forthcoming</i> Ten 10th Street NW, Suite 1050 Atlanta, Georgia 30309 Phone: (404) 521-9900 bsapp@selcga.org mhuynh@selcga.org bsherrier@selcga.org <i>Counsel for Plaintiffs Altamaha Riverkeeper and One Hundred Miles</i></p>
--	--

CERTIFICATE OF SERVICE

I certify that on December 3, 2018, I electronically filed the foregoing *Consent Motion for Consolidation and Brief in Support* with the Clerk of Court using the CM/ECF system. Service copies have also been provided via U.S. First Class Mail to Defendants in this matter as follows:

Colonel Daniel Hibner, District Commander
U.S. Army Corps of Engineers, Savannah District
100 W. Ogiethorpe Ave
Savannah, GA 31401

Tunis McElwain, Chief of Regulatory Branch
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Lieutenant General Todd Semonite
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Operations Division
Regulatory Branch
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

/s/ Kasey Sturm
Kimberly [Kasey] A. Sturm
GA Bar No. 690615
*Counsel for Plaintiff Center for a
Sustainable Coast, Inc.*

WEISSMAN PC
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CENTER FOR A SUSTAINABLE COAST,
INC.

Plaintiff,

v.

THE UNITED STATES ARMY CORPS
OF ENGINEERS, Lieutenant General
TODD T. SEMONITE, in his official
capacity as Commanding General of the
U.S. Army Corps of Engineers, Colonel
DANIEL HIBNER in his official capacity
as District Commander of the Savannah
District, and TUNIS McELWAIN, in his
official capacity as Chief of the
Regulatory Branch of the U.S. Army
Corps of Engineers,

Defendants.

Docket No: 4:18-cv-00254-RSB-JEG

ALTAMAHA RIVERKEEPER and
ONE HUNDRED MILES,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS
OF ENGINEERS; Lieutenant General
TODD T. SEMONITE, in his official

Docket No: 4:18-cv-00251-JRH-JEG

capacity as Commanding General of the U.S. Army Corps of Engineers; Colonel DANIEL HIBNER in his official capacity as District Commander of the Savannah District; and TUNIS McELWAIN, in his official capacity as Chief of the Regulatory Branch of the U.S. Army Corps of Engineers,

Defendants,

And

SEA ISLAND ACQUISITION, LLC,

Applicant for Intervention.

**MEMORANDUM IN SUPPORT OF
CONSENT MOTION FOR CONSOLIDATION OF ACTIONS**

Pursuant to Rule 42 of the Federal Rules of Civil Procedure, Plaintiffs, with the consent of Defendants, in the above-captioned cases submit this motion to consolidate these actions, *Center for a Sustainable Coast, Inc. v. The United States Army Corps of Engineers, et al.*, No. 4:18-cv-00254-RSB-JEG (November 2, 2018), with *Altamaha Riverkeeper and One Hundred Miles v. The United States Army Corps of Engineers, et al.*, No. 4:18-cv-00251-JRH-JEG (October 31, 2018), currently pending before the Honorable J. Randal Hall. The cases have been marked as related cases (*See Center for a Sustainable Coast* Dkts. 1, 1-1 and *Altamaha Riverkeeper* Civil Docket form), and Defendants consent to consolidation of the cases. Both cases challenge the same permit issued by the U.S. Army Corps of Engineers (the Corps) to Sea Island Acquisition LLC (d.b.a. Sea Island Company), allowing Sea Island Company to construct a 350-foot long T-head groin on

the Sea Island Spit and to dredge and to dredge and pump between 1,315,000 and 2,500,000 cubic yards of sand from an offshore source to build up beach on Sea Island. In that regard, the two cases involve almost identical facts and questions of law, and it would be in the best interest of judicial economy to avoid the unnecessary costs, resources and delays that would result in the case moving forward separately. Both cases challenge the decision of the Corps to issue the permit as being arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law in violation of the Administrative Procedures Act (5 U.S.C. § 706(2)(A) (APA), the Clean Water Act (33 U.S.C. §1251 et seq.) (CWA) and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) (NEPA), and both actions have the same named defendants with nearly identical facts that lead to both actions being filed. The nature of the remedies requested in both actions are almost identical, including requests for preliminary and permanent relief to enjoin construction of the groin. Notably, the parties consent to consolidation to promote judicial economy and to avoid duplication and unnecessary cost and expenditure of resources. Accordingly, this court should grant the Consent Motion and consolidate *Center for a Sustainable Coast* with *Altamaha Riverkeeper* to promote judicial economy and the expenditure of resources and to prevent unnecessary costs and delay.

STATEMENT OF FACTS

On October 31, 2018, the Altamaha Riverkeeper and One Hundred Miles, the plaintiffs in *Altamaha Riverkeeper* filed a complaint alleging that the permit issued by

the Corps was issued in violation of the APA, CWA and NEPA rendering the decision arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law, and seeking a preliminary and permanent injunction preventing the construction of the groin and dredging and pumping of sand. *See Altamaha Riverkeeper* Dkt. 1. The complaint in *Center for a Sustainable Coast* was filed on November 2, 2018 and includes substantially the same allegations regarding the Corp's decision to issue the permit and seeks almost identical remedies as the plaintiffs in *Altamaha Riverkeeper*. *See Altamaha Riverkeeper* Dkt. 1 and *Center for a Sustainable Coast* Dkt. 1. Accordingly, when the *Center for a Sustainable Coast* was filed, the Civil Cover sheet was marked to indicate that it was related to *Altamaha Riverkeeper* (*See Altamaha Riverkeeper* Dkt. 1-1) and the complaint referred specifically to *Altamaha Riverkeeper* as well as the Motion for Preliminary Injunction (*See Altamaha Riverkeeper* Dkt. 5) in that matter. *See Center for a Sustainable Coast* Dkt. 1. Importantly, the plaintiffs in both cases are conservation groups who are harmed and whose members are harmed by the Corps' issuance of the permit. *See Altamaha Riverkeeper* Dkt. 1; *see also Center for a Sustainable Coast* Dkt. 1. The named Defendants are the same in both cases.

ARGUMENT

These cases should be consolidated because both actions involve common facts, allegations and questions of law and it is in the best interest of the parties, witnesses, and this Court's time and expense. Under Federal Rule of Civil Procedure Rule 42, if actions before the court involve a common question of law or fact, the court may: (1)

join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay. Fed. R. Civ. P. 42(a). Where the common question of law or fact requirement has been satisfied, trial courts in the Eleventh Circuit are “encouraged ... to ‘make good use of Rule 42(a) ... in order to expedite the trial and eliminate unnecessary repetition and confusion.’ “ *Hendrix v. Raybestors-Manhattan, Inc.*, 776 F.ed 1492, 1495 (11th Cir. 1985) (quoting *Dupont v. S.Pac. Co.*, 366 F. 2d 193, 195 (5th Cir. 1966)). Here, there is no doubt that the common questions of law or fact requirement has been satisfied as both cases arise out of, allege, and rely upon substantially the same facts regarding the Corps’ decision to issue the permit and the irreparable harm resulting from the same. Consolidation of the cases will not prejudice any of the parties. In fact, the parties consent to consolidation of these cases. It is in the best interest of all parties, including the Court, to consolidate the two matters, *Center for a Sustainable Coast with Altamaha Riverkeeper* before Judge Hall because the parties involved are the same, counsel is or is likely to be the same, and the witnesses and/or evidence will likely be the same as both actions involve almost identical factual and legal allegations.

CONCLUSION

For the foregoing reasons, Plaintiffs with the consent of Defendants respectfully request that this Court grant this consent motion and consolidate *Center for a Sustainable Coast, Inc. v. The United States Army Corps of Engineers, et al.*, No. 4:18-cv-00254-RSB-JEG (November 2, 2018), with *Altamaha Riverkeeper and One Hundred Miles v. The United*

States Army Corps of Engineers, et al, No. 4:18-cv-00251-JRH-JEG (October 31, 2018) before Judge Hall.

Respectfully submitted this 3rd day of December, 2018.

<p>WEISSMAN, PC</p> <p><u>/s/ Kasey Sturm</u> Kimberly [Kasey] A. Sturm GA Bar No. 690615</p> <p>One Alliance Center, 4th Floor 3500 Lenox Road Atlanta, Georgia 30326 <i>Counsel for Plaintiff Center for a Sustainable Coast, Inc.</i></p>	<p>SOUTHERN ENVIRONMENTAL LAW CENTER</p> <p><u>/s/ William W. Sapp</u> William W. Sapp Georgia Bar No. 626435 Megan Hinkle Huynh Georgia Bar No. 877345 <i>Admitted pro hac vice</i> Bob Sherrier Georgia Bar No. 979890 <i>Pro hac vice motion forthcoming</i> Ten 10th Street NW, Suite 1050 Atlanta, Georgia 30309 Phone: (404) 521-9900 bsapp@selcga.org mhuynh@selcga.org bsherrier@selcga.org <i>Counsel for Plaintiffs Altamaha Riverkeeper and One Hundred Miles</i></p>
--	--