

Georgia Navigability Report

Summary

Public access to waterways for the purposes of fishing, hunting, and boating depends on whether a stream is navigable under Georgia law.

State Test of Navigability

Georgia law defines a navigable stream as one “which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year,” but “[t]he mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.”¹ Factors to be considered may include historical use and whether the stream is navigable under “current commercial standards.”² Public easements of passage are only granted upon acceptance by the appropriate public authorities, regardless of how long boating has occurred on the stream.³

The Code of 1863, which provided the original definition of navigability, was intended to codify then-existing law.⁴ The Code of 1863 includes the principle that beds of non-navigable streams belong to the owner of the adjacent land and that the owner of such a stream has the right to exclusive possession of it.⁵ A private easement in a stream can be acquired by prescription which requires open and notorious, continuous use of the river under an adverse claim for the requisite statutory time period.⁶

Georgia owns in “fee simple title to the foreshore in all navigable tide-waters.”⁷ Georgia defines “Tidewaters” as “the sea and all rivers and arms of the sea that are affected by the tide, where the tide rises and falls, which are capable of use for fishing, passage, navigation, commerce, or transportation, and which are located within the jurisdiction of the State of Georgia.”⁸

¹ Ga. Code § 44-8-5 (2020).

² *Givens v. Ichauway, Inc.*, 493 S.E.2d 148, 151 (Ga. 1997) (affirming a finding that the subject creek was not navigable, but because the trespasser had adduced admissible evidence to show navigability).

³ *Id.* at 152-53.

⁴ *Id.* at 152.

⁵ *Id.*; Ga. Code §§ 44-8-2, 44-8-3.

⁶ *Givens*, 493 S.E.2d at 153; *Georgia Canoeing Ass’n v. Henry*, 482 S.E.2d 298 (Ga. 1997); *Seaboard Air Line Ry. v. Sikes*, 60 S.E. 868 (Ga. Ct. App. 1908).

⁷ *Kelso v. Baxter*, 665 S.E.2d 381, 384 (Ga. Ct. App. 2008) (citations omitted); *see also* Ga. Code § 52-1-2. The foreshore is the strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide.” *Id.* at 384 n.5 (quoting *Dorroh v. McCarthy*, 462 S.E.2d 708 (1995)).

⁸ Ga. Code § 52-1-3.

Extent of Public Rights in Navigable and Non-Navigable Rivers

The rights of owners of lands adjacent to navigable streams extends down to the low-water mark in the bed of the stream, which implies that there is no right to portage.⁹ Permission must be obtained from owners before fishing in private waters or from private land.¹⁰

The public have no rights on non-navigable waters unless some separate servitude exists.¹¹ The Code of 1863, which provided the original definition of navigability, was intended to codify then-existing law.¹² The Code of 1863 includes the principle that beds of non-navigable streams belong to the owner of the adjacent land and that the owner of such a stream has the right to exclusive possession of it.¹³ And under existing Georgia statute, “[t]he beds of nonnavigable streams belong to the owner of the adjacent land.”¹⁴ A private easement in a stream can be acquired by prescription which requires open and notorious, continuous use of the river under an adverse claim for the requisite statutory time period.¹⁵

Miscellaneous

Individuals or corporations owning or controlling land on both sides of a non-navigable stream may construct dams, canals, etc., but are liable for property damage resulting from diversion of flow.¹⁶ Owners may also divert the courses of non-navigable water through their land.¹⁷ Further, persons owning lands on any stream are authorized to ditch or embank their lands for flood control provided they do not divert the stream from its “ordinary channel.”¹⁸ An owner of land through which a non-navigable stream flows may not obstruct or divert the stream, causing it to overflow or pollute the land of another.¹⁹

The Metropolitan River Protection Act was passed in 1978 and amended in 1998, and provides strict regulation of development of the “stream corridor” of the Chattahoochee River in the metro Atlanta area.²⁰ The stream corridor is all land in the area within 2000 feet of the watercourse (banks of the Chattahoochee) or within the flood plain, whichever is greater.²¹ This protection extends to the Chattahoochee River National Recreation Area and the National Water Trails.

⁹ Ga. Code § 44-8-5.

¹⁰ Ga. Code § 27-4-2.

¹¹ See *Givens*, 493 S.E.2d at 150 (finding that a leaseholder who “[held] a lease to the land on both sides of the creek and [] has the right to exclude others from the creek unless the stream is navigable or some servitude exists”).

¹² *Id.* at 152.

¹³ *Id.*; Ga. Code §§ 44-8-2, 44-8-3.

¹⁴ Ga. Code § 44-8-2.

¹⁵ *Givens*, 493 S.E.2d at 153; *Georgia Canoeing Ass’n v. Henry*, 482 S.E.2d 298 (Ga. 1997); *Seaboard Air Line Ry. v. Sikes*, 60 S.E. 868 (Ga. Ct. App. 1908).

¹⁶ Ga. Code § 44-8-4.

¹⁷ *Id.* § 44-8-9

¹⁸ *Id.*

¹⁹ *Id.* § 51-9-7.

²⁰ *Id.* § 12-5-440 et seq.

²¹ *Id.* §§ 12-5-440, 12-5-441, 12-5-444.

Though fishing is permitted in navigable waters, it is unlawful to place “boards, wire, barrels, buckets, or any device or obstruction in any stream or other body of water... in an attempt to catch fish by grappling, noodling, or hand grabbing.”²²

The Department of Natural Resources is authorized to provide for free passage of fish in fresh water streams for spawning by giving written notice to those owning, leasing, or constructing a dam or other obstruction to provide a suitable fish ladder or passageway to allow the fish to pass freely over the dam or obstruction.²³

Additional Resources:

The Wildlife Resources Division of the Georgia Department of Natural Resources maintains many public access boat ramps. An interactive map of those ramps can be found at the following website: <https://www.georgiaoutdoormap.com/>. This map can also help locate fishing locations, camp and recreational sites and other helpful information. Further beneficial information regarding fishing and boating can be found on the following sites.

- Georgia Department of Natural Resources: <https://gadnr.org/>.
- Georgia Department of Natural Resources – Wildlife Division: <https://georgiawildlife.com/>.
- Georgia River Network: <https://garivers.org/>.
- National Trails System: <https://www.nps.gov/subjects/nationaltrailssystem/national-water-trails-system.htm>.

²² *Id.* § 27-4-37.

²³ *Id.* § 27-1-8.