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CONSERVATION AND NATURAL RESOURCES

Department of Natural Resources: Establish Minimum Standards and Procedures for Protection of Mountains and River Corridors

CODE SECTION: O.C.G.A. § 12-2-8 (amended)
BILL NUMBER: HB 643
ACT NUMBER: 555
SUMMARY: The Act provides for protection of certain mountain slopes and river corridors by limiting development and placing restrictions on the land owners. The mountain protection portion of the bill protects all mountain slopes at an elevation of over 2,200 feet with a grade of more than twenty-five percent. The river corridor protection portion of the bill restricts development within 100 feet of rivers having a flow rate of over 400 cubic feet per second, limiting permissible structures to single family residences and necessary infrastructure. A natural vegetative cover must be maintained in the buffer area. Both sections provide exemptions for land use plans developed before the effective date of the Act.

EFFECTIVE DATE: July 1, 1991

History

Code section 12-2-8 was established in 1989 to provide protection to certain sensitive environmental areas of the State.¹ Originally, specific protection was extended to "watersheds of streams and reservoirs that are to be used for public water supply, for the protection of the purity

1. Telephone Interview with Sally Bethea, Georgia Conservancy (Apr. 9, 1991) [hereinafter Bethea Interview]. The Georgia Conservancy is a private nonprofit organization concerned with conservation of natural resources and the ecosystem in Georgia. *Id.* It was instrumental in encouraging the passage of The Mountain and River Corridor Protection Act. *Id.*; see also 1989 Ga. Laws 634, § 5.1 (formerly found at O.C.G.A. § 12-2-8 (Supp. 1990)). The 1989 Act, for the first time, established a "framework to establish, facilitate and encourage coordinated, comprehensive statewide planning at the local, regional, and state levels of government." 1989 Ga. Laws 634 pmbl.

of ground water, and for the protection of wetlands."² While limited in scope, the regulations were an important first step for Georgia, as state-level land use planning had not previously fared well.³ The Lieutenant Governor was instrumental over previous legislative sessions in introducing bills that would have amended the section to include mountain protection.⁴ Until the 1991 session, all these attempts had failed to gain approval.⁵

The Governor was interested in the Act because of concern that the natural beauty of the north Georgia mountains was being destroyed by overdevelopment.⁶ The Governor's ability to persuade the House to accept the Act was increased after the election, leading to the passage of the Mountain and River Corridor Protection Act.⁷

The Governor's floor leader has been instrumental in sponsoring river protection bills in the Georgia General Assembly over previous years.⁸ For the 1991 legislative session, the two River Protection and Mountain Protection Acts were combined and introduced by the Governor's floor leader.⁹

HB 643

HB 643, as introduced from the Governor's Office, would have established stringent restrictions on development of river corridors and lesser standards for the protection of mountain areas.¹⁰ As it passed through the House Committee on Natural Resources and the floor of the House, it was modified considerably.¹¹ Finally, a few minor amendments were added on the Senate floor before HB 643 was approved and sent to the Governor for signature.¹² The bill that emerged from the legislature is neither as restrictive nor comprehensive as the bill that was introduced.¹³

2. 1989 Ga. Laws 634, § 5.1 (formerly found at O.C.G.A. § 12-2-8 (Supp. 1990)). The law provided that minimum standards be set for the protected areas by the Department of Natural Resources (DNR). *Id.* No specific regulations were imposed by the Act. *Id.*

3. Bethea Interview, *supra* note 1.

4. John Harmon, *Bill to Protect Hill and Dale*, ATLANTA CONST., Feb. 27, 1991, at D1.

5. *Id.*

6. *Id.*

7. *Id.* at D4. Telephone Interview with Rep. Dubose Porter, House District No. 119 (Apr. 12, 1991) [hereinafter Porter Interview]. Mr. Porter was the Governor's floor leader in the House for the 1991 session and was responsible for guiding HB 643 through the legislature. *Id.*

8. *Id.*

9. *Id.*

10. *See* HB 643, as introduced, 1991 Ga. Gen. Assem.

11. *Compare* HB 643 (HCS), 1991 Ga. Gen. Assem. *with* HB 643 (HFSFA), 1991 Ga. Gen. Assem.

12. *See* O.C.G.A. § 12-2-8 (Supp. 1991).

13. *Compare* HB 643, as introduced, 1991 Ga. Gen. Assem. *with* O.C.G.A. § 12-2-8 (Supp. 1991).

The mountain protection portion of the bill was only slightly modified as it passed through the General Assembly. As originally envisioned, it would have limited development on mountain slopes over 2,000 feet in elevation with a slope of greater than twenty-five percent.¹⁴ When the bill emerged from House Natural Resources Committee, the mountain protection portion of the bill provided greater protection to mountain slopes by protecting more trees than the introduced version.¹⁵ The floor amendment excluded restrictions that required an architect or engineer to approve landscaping plans for commercial buildings on protected slopes.¹⁶ But most significantly it raised the elevation for protected mountains from 2,000 feet to 2,200 feet.¹⁷ This slightly reduced the protected areas covered by the Act.¹⁸

As introduced, the Act would have left many of Georgia's most beautiful areas unprotected because they are under 2,000 feet in elevation.¹⁹ The Governor had stated that he would like a more comprehensive bill, but realized that developers would be able to defeat a bill that offered protection to more land.²⁰ Past attempts had been stalled by legislators from northeast Georgia districts who contended that such bills would infringe on the property rights of farmers, developers, and landowners.²¹

The most significant changes occurred in the river corridor protection

14. HB 643, as introduced, 1991 Ga. Gen. Assem. The bill would have restricted single family residences to one-acre, one hundred-foot-wide minimum lots. Multifamily homes would be limited to four per acre or six per acre if attached to a public sewer system. Tree cutting would be limited. *Id.*

15. *Compare* HB 643, as introduced, 1991 Ga. Gen. Assem. *with* HB 643 (HCS), 1991 Ga. Gen. Assem. As introduced, the bill would have prohibited the cutting without permission of more than 50% of trees larger than six inches in diameter at a point six feet above the ground. HB 643, as introduced, 1991 Ga. Gen. Assem. The committee substitute measured the six-inch diameter at four and one-half feet above the ground, apparently protecting more, and smaller trees. HB 643 (HCS), 1991 Ga. Gen. Assem. The bill as passed, defined protected trees as those eight inches in diameter at a point four and one-half feet above the ground. O.C.G.A. § 12-2-8 (Supp. 1991). These changes resulted from some confusion about where and at what diameter the Forestry Department measures a tree as an acceptable size for commercial harvesting. Porter Interview, *supra* note 7. As the Act worked its way through the General Assembly, the definition changed several times until the official Forestry Department designation was finally reached and included in the as-passed version. *Id.*

16. *Compare* HB 643 (HCS), 1991 Ga. Gen. Assem. *with* HB 643 (HFSFA), 1991 Ga. Gen. Assem.

17. *Compare* HB 643 (HCS), 1991 Ga. Gen. Assem. *with* HB 643 (HFSFA), 1991 Ga. Gen. Assem.

18. Bethea Interview, *supra* note 1. Mountain slopes above 2400 feet in Georgia are considered on federal land and are therefore subject to federal law. *Id.*

19. Harmon, *supra* note 4, at D4. These unprotected areas include "most of north-west Georgia and valleys around Helen, Clarkesville, Cleveland and Dahlonega." *Id.*

20. *Id.*

21. *Id.*

aspects of the bill. As originally introduced, the bill would have protected all perennial streams in the State with no construction or clearing of land allowed in the buffer zone.²² Only very limited exceptions were allowed.²³ The House Natural Resources Committee substitute version of the bill allowed construction of boat ramps and seawalls in the buffer zone, and required a flow rate of five cubic feet of water per second before a stream would be protected.²⁴

HB 643 was modified more significantly on the floor of the House. When the House floor substitute version of the bill was sent to the Senate, the flow rate of rivers subject to protection was 400 cubic feet per second; private residences and all necessary appurtenances could be built in the buffer zone provided that the lot on which the house was built was at least two acres; and the references to wetlands and floodplains were eliminated.²⁵ These amendments were the result of concerns about the impact of the stronger bill on development of river corridors.²⁶ In the Senate, minor modifications were made to the bill to clarify the definitions and allowable encroachments on the buffer area.²⁷

It is unclear how much land area was lost in the amendments because there is no indication of how much land was included in the legislation as introduced.²⁸ For this reason, the backers of the bill accepted the significant reduction in the covered area, thereby endorsing an Act that initially covers only the major river corridors in Georgia.²⁹ Likewise, as the Act covers only major river corridors, the relaxed construction restrictions were palatable because the main problem perceived by the sponsors of the bill is the density of construction; the two acre minimum lot size adequately addresses this concern.³⁰

To effectively address the problems of river corridors in the future, a companion House Resolution was passed requesting that the United States Department of Fish and Wildlife assist the Georgia Department

22. HB 643, as introduced, 1991 Ga. Gen. Assem. The buffer zone included all land within 100 feet of the perennial stream as well as all the land "within the 100 year floodplain . . . or being classified as wetlands." *Id.*

23. *Id.* The exceptions included prior uses, permitted mining activities, or utilities, provided there was no feasible alternate location, and agricultural and approved forestry activities. *Id.*

24. HB 643 (HCS), 1991 Ga. Gen. Assem.

25. HB 643 (HFSFA), 1991 Ga. Gen. Assem.

26. Porter Interview, *supra* note 7.

27. O.C.G.A. § 12-2-8 (Supp. 1991). The changes defined more clearly the 100-foot buffer zone (as being measured from the mean high water mark), and specifically allowed for encroachment necessary for utility and road construction. *Id.*

28. Porter Interview, *supra* note 7.

29. *Id.*

30. *Id.* The Act does retain the restriction that the buffer zone retain a "natural vegetative buffer," apparently even on those lots where houses are built as allowed by the statute. O.C.G.A. § 12-2-8 (Supp. 1991). However, this restriction will be interpreted to allow lawns surrounding permitted residences. Porter Interview, *supra* note 7.

of Natural Resources in a comprehensive assessment of Georgia rivers.³¹ The Resolution was needed because there has never been a comprehensive survey conducted of Georgia rivers and streams.³² Without the survey, it is impossible to tell how much protection Georgia's rivers need or what kind of protection will be most effective in preserving them.³³

The survey should take about one year to complete.³⁴ Armed with the results of the survey, the bill sponsor expects to introduce a more stringent and specific bill in a future session that will provide greater protection to the river corridors of Georgia.³⁵

However, the major perceived weakness of the bill is that the State has little enforcement power.³⁶ As part of the State's "growth strategies plan," enforcement of the provisions of the Act is left up to the discretion of local governments.³⁷ The State's "stick" is that it may withhold funds or development grants if local officials do not comply with the restrictions established by the Act.³⁸

Generally, Code section 12-2-8 is a first important step in what is anticipated to be a more thorough, comprehensive, and centralized system of protecting Georgia's sensitive natural areas.

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31. HR 110, as passed, 1991 Ga. Gen. Assem.

32. Porter Interview, *supra* note 7.

33. *Id.*

34. *Id.*

35. *Id.*

36. Bethea Interview, *supra* note 1.

37. Porter Interview, *supra* note 7.

38. *Id.*