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Parks, Historic Areas, Memorials, and Recreation HB 715

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CONSERVATION AND NATURAL RESOURCES

Parks, Historic Areas, Memorials, and Recreation: Amend Part 1 of Article 7 of Chapter 3 of Title 12 of the Official Code of Georgia Annotated, Relating to the Jekyll Island—State Park Authority, so as to Revise the Powers and Responsibilities of the Authority; Define Terms; Revise the Components of the Master Plan; Clarify Development Powers and Restrictions for the Authority; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 12-3-231, -243, -243.1 (amended)
BILL NUMBER:	HB 715
ACT NUMBER:	479
GEORGIA LAWS:	2014 Ga. Laws 64
SUMMARY:	The Act establishes a set number of acres that may be developed on Jekyll Island. It states that no more than 1,675 acres of the Island's total land area may be developed. Currently, 1,597 of those acres have been developed, and the Act delineates how the remaining seventy-eight acres may be used.
EFFECTIVE DATE:	July 1, 2014

History

In 1950, the Georgia General Assembly created the Jekyll Island State Park Authority (the "Authority") and empowered it to, among other things, improve, maintain, subdivide, sublease, and administer the Island's land area.¹ In 1957, the General Assembly further defined the Authority's powers by passing a bill allowing it to subdivide and improve up to "one-half of the land area of Jekyll Island which lies above the water at mean high tide."² In 1971, the

1. O.C.G.A. § 12-3-243 (2007).

2. 1957 Ga. Laws 610. The "mean high tide" refers to "a tidal datum. The average of all the high water heights observed over the National Tidal Datum Epoch." 2013 Ga. Op. Att'y Gen. 2 (quoting NOAA, http://tidesandcurrents.noaa.gov/datum_options.html (last visited May 7, 2014)).

legislature amended this measurement and reduced the amount that could be subdivided, improved, leased, or sold to thirty-five percent of Jekyll Island's area.³ This legislation was an effort to promote conservation and thus limit future development on Jekyll.⁴

The thirty-five percent provision, commonly referred to as the "65/35 rule", has been a point of contention between the Authority and the environmental community for over thirty years.⁵ The source of the conflict was how the Jekyll Island land area was measured to derive the percentage.⁶ The 1971 legislation stated that "not more than [thirty-five] percent of the land area of Jekyll Island which lies *above water at mean high tide*" was allowed to be subdivided and improved.⁷ The environmental community, however, believed that such a measurement was inadequate since a large portion of land area lying above the mean high tide line during some times of the year is completely under water at other times of the year.⁸ These measurements are extremely important because as the measurement of the Island's land area changes, so does the percentage of the Island that can be developed.⁹

In 1995, the Georgia General Assembly required the Authority to create a Master Plan for the management, preservation, protection, and development of Jekyll Island.¹⁰ In the Master Plan, the Authority set the mark at which the land area would be measured at 4.3 feet above the National Geodetic Vertical Datum of 1929 (NDVD).¹¹ The planning team believed that this mark, while inconsistent with the mean high watermark, was "most consistent with the intent of the

3. 1971 Ga. Laws 453 (codified as O.C.G.A. § 12-3-243.1(a) (2007)) ("The authority is empowered to survey, subdivide, improve, and lease or sell to the extent and in the manner provided in this part, as subdivided and improved, not more than 35 percent of the land area of Jekyll Island which lies above water at mean high tide . . .").

4. See Interview with Pierre Howard, President of the Georgia Conservancy (April 4, 2014) [hereinafter Howard Interview].

5. See Howard Interview, *supra* note 4. The 65/35 rule refers to the ratio of Jekyll Island's land that must be conserved versus that which may be developed, respectively.

6. *Id.*

7. 1971 Ga. Laws 453 (codified as O.C.G.A. § 12-3-243.1(a) (2007)).

8. See Howard Interview, *supra* note 4.

9. *Id.*

10. 1995 Ga. Laws 121 (codified as O.C.G.A. § 12-3-243.1(a) (2007)) ("The authority shall, on or before July 1, 1996, cause to be created a master plan for the management, preservation, protection, and development of Jekyll Island . . .").

11. 2013 Ga. Op. Att'y Gen. 2.

statute” because the mean high watermark is under water for several months out of the year.¹² It is uncertain how the planning team adopted the 4.3-foot mark in 1996, but since that time, it has been recognized as the measuring mark for “65/35 rule” purposes.¹³

In the past few years, the Authority created the “65/35 Task Force” to revisit the manner in which Jekyll Island’s land area is measured.¹⁴ The Task Force concluded that measuring Jekyll’s land area from the mean higher high tide¹⁵ would provide the Authority with a more accurate measurement of the usable and developable portion of the island since the land area under water at points during the year would not be included in such a measurement.¹⁶ The 65/35 Task Force then submitted its recommendations to the Authority for its approval.¹⁷

Upon receiving the 65/35 Task Force’s recommendation, Mr. Jones Hooks, the Authority’s Executive Director, requested an official opinion from Attorney General Sam Olens as to whether the Authority had “the discretion to adopt the 65/35 Task Force recommendation regarding the measurement of the land area of Jekyll Island in connection with amending [the Master Plan].”¹⁸ Attorney General Olens concluded that any measurement reference point other than mean high tide was unacceptable because the General Assembly’s intent when drafting the legislation was clear that the mean high tide should be the point from which Jekyll’s land area should be measured.¹⁹

The Authority consequently rejected the 65/35 Task Force’s recommendations, and the issue continued to be a point of contention until the fall of 2013.²⁰ At that time, a number of stakeholders,

12. *Id.*

13. *Id.*

14. See Howard Interview, *supra* note 4. The 65/35 Task Force included Authority staff, Carl Vinson Institute of Georgia staff, and representatives from various stakeholder groups. The Georgia Conservancy, of which Pierre Howard is president, was one of the primary stakeholders on the 65/35 Task Force.

15. *Tidal Datums*, NOAA, http://tidesandcurrents.noaa.gov/datum_options.html (last visited Sept. 3, 2014) (providing definition of “mean higher high water”).

16. See Howard Interview, *supra* note 4.

17. 2013 Ga. Op. Att’y Gen. 2.

18. *Id.*

19. *Id.* (“[I]t is my official opinion that, based on the relevant statutory language, the Jekyll Island State Park Authority does not have discretion to adopt the “65/35 Task Force” Recommendation to the extent that it uses a measurement reference point other than Mean High Tide.”).

20. See Howard Interview, *supra* note 4.

including locals, businesses, and the environmental community, got together seeking a compromise.²¹ The stakeholders suggested moving from the percentage measurement formula to an acreage limit that specifically denoted the number of developable acres on Jekyll Island; the parties agreed to a total of 1,675 acres.²² Of that amount, 1,597 acres have already been developed.²³ Therefore, only seventy eight more acres of Jekyll Island can be converted to developed land.²⁴ These amounts are reflected in HB 715, memorializing the agreement between the parties.²⁵

Bill Tracking of HB 715

Consideration and Passage by the House

Representatives Mark Hamilton (R-24th), Allen Peake (R-141st), Jay Powell (R-171st), Lynn Smith (R-70th), Jon Burns (R-159th), and Jay Roberts (R-155th) sponsored HB 715.²⁶ The House read the bill for the first time on January 14, 2014.²⁷ The House read the bill for the second time on January 15, 2014.²⁸ Speaker of the House David Ralston (R-7th) assigned it to the House Committee on Natural Resources and Environment, which favorable reported the bill on January 24, 2014.²⁹ The House read the bill for a third time on January 31, 2014, and passed it by a vote of 156 to 1 after minimal floor debate.³⁰

21. *Id.*

22. *Id.*

23. HB 715, 2014 Ga. Gen. Assem.

24. HB 715, 2014 Ga. Gen. Assem.

25. HB 715, 2014 Ga. Gen. Assem.

26. HB 715, 2014 Ga. Gen. Assem.; Georgia General Assembly, HB 715, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/display/20132014/HB/715>.

27. State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

28. *Id.*

29. Video Recording of House Natural Resources and Environment Committee, Jan. 23, 2014 at 14 min., 01 sec. (committee vote), [hereinafter House Video, Jan. 23, 2014] <http://www.house.ga.gov/Committees/en-US/CommitteeArchives98.aspx>; State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

30. Video Recording of House Floor Debate, Jan. 31, 2014 at 1 hr., 6 min., 15 sec. (remarks by Rep. Hamilton (R-24th)), [hereinafter House Floor Debate] <http://www.gpb.org/lawmakers/2014/day-14>; State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

Consideration and Passage by the Senate

Senator Ross Tolleson (R-20th) sponsored HB 715 in the Senate.³¹ The bill was first read on February 3, 2014. Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Committee on Natural Resources and the Environment.³² The Senate Committee on Natural Resources and the Environment favorably reported the bill on March 12, 2014.³³ The bill was also read a second time on March 12, 2014.³⁴ The bill was tabled on March 18, 2014, and was subsequently taken off the table and passed on March 18, 2014 by a vote of 48 to 0.³⁵ The bill was sent to the Governor on March 26, 2014 and signed into law on April 14, 2014.³⁶ No amendments were offered throughout the legislative process as the text had been extensively discussed prior to the session in an effort to minimize debate. This was a direct byproduct of the aforementioned stakeholder meetings.³⁷ Thus, HB 715 was passed in both chambers and signed by the Governor in its original form.³⁸

The Act

The Act amends Chapter 3 of Title 12 of the Official Code of Georgia Annotated with the purpose of creating a new system for determining which land may be used for development on Jekyll Island.³⁹ The Act's first section adds the definitions of "developed land" and "undeveloped area" to section 12-3-231.⁴⁰ The definition of "developed land" includes land that has been "disturbed and no longer retains original, natural functions."⁴¹ "Undeveloped area"

31. State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

32. *Id.*

33. State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

34. *Id.*

35. Video Recording of Senate Floor Debate PM, Mar. 18, 2014 at 1 hr., 30 min., 58 sec. (remarks by Sen. Tolleson (R-20th)), [hereinafter Senate Floor Debate] <http://www.gpb.org/lawmakers/2014/day-14>; State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

36. *Id.*

37. See Howard Interview, *supra* note 4.

38. State of Georgia Final Composite Status Sheet, HB 715, May 1, 2014.

39. O.C.G.A. § 12-3-231 (2007).

40. O.C.G.A. § 12-3-231 (Supp. 2014).

41. O.C.G.A. § 12-3-231(4) (Supp. 2014).

means any area that “remains free from the built environment.”⁴² The definition of both these terms includes common examples.⁴³ Section One of the Act also amends the definition of “Master Plan” to reflect that the document is already in existence, no longer just contemplation.⁴⁴

Section Two of the Act replaces subsection (a) in 12-3-243 to better clarify the powers and responsibilities of the Jekyll Island Authority and how it may apportion land.⁴⁵ The former version of section 12-3-243 provided the foundation for the 65/35 rule, prohibiting the Authority from surveying, subdividing, improving, leasing, or selling sixty-five percent of the Island.⁴⁶ Interestingly, new subsection (a)(1)(A) uses the phrase “shall forever be retained as undeveloped.”⁴⁷ Subsection (a)(1)(B) apportions the remaining undeveloped area, giving twelve acres for current projects, forty-six acres for limited public use, and preserving twenty acres for unrestricted use.⁴⁸ Section 12-3-243.1(c)(5) states that any proposed development to the land available under section 12-3-243(a)(1)(B) must be surveyed and marked prior to the public hearing required for the changes.⁴⁹

Subsection (a)(2)(B) of section 12-3-243 designates an area of the Island that cannot ever be developed, except for use as “public bicycle trails, public nature trails, or public picnic areas.”⁵⁰ This subsection gives the Authority, at the expiration of an existing lease on the southern portion of the Island, the choice to renew the lease, lease the land to a new lessee for a single-family residence or noncommercial purpose, or set aside the land for a public use.⁵¹ Subsection 12-3-243(a)(2)(B) of section 12-3-243 notes that the

42. O.C.G.A. § 12-3-231(8) (Supp. 2014).

43. O.C.G.A. § 12-3-231 (4), (8) (Supp. 2014). Examples of developed land include roads, pathways, utility easements, and golf courses. Undeveloped area includes marsh, forest, dirt roads no longer in use, sand dunes, beach, and fresh water wetlands.

44. O.C.G.A. § 12-3-231(5) (Supp. 2014).

45. O.C.G.A. § 12-3-243 (Supp. 2014).

46. 1971 Ga. Laws 453 (codified as O.C.G.A. § 12-3-243.1(a) (2007)).

47. O.C.G.A. § 12-3-243(a)(1)(A) (Supp. 2014). While not likely to be a roadblock to future change, it does signify the Act’s purpose of creating a permanent system.

48. O.C.G.A. § 12-3-243(a)(1)(B) (Supp. 2014).

49. O.C.G.A. § 12-3-243.1(c)(5) (Supp. 2014).

50. O.C.G.A. § 12-3-243(a)(2)(B) (Supp. 2014). These coordinates correspond with the southernmost section of the Island.

51. O.C.G.A. § 12-3-243(a)(2)(A) (Supp. 2014).

existing 4-H center and Soccer Complex, both on the southern side of the Island, may continue under their current leases and may be “improved for the same or similar purposes.”⁵² May 30, 2007 is used as a benchmark for past development because, in 2007, the Legislature amended section 12-3-243(a)(2)(B) to restrict future development on the southern portion of Jekyll Island.⁵³ The language of this subsection tracks previous versions of the subsection.⁵⁴

Finally, the Act amends section 12-3-243.1 to remove language relating to the creation of a master plan and the 65/35 rule.⁵⁵ The change makes clear that a master plan is already in place and the Authority is responsible for maintaining it.⁵⁶ The Act eliminates all references to the sixty-five percent land area because of the switch to dedicating specific acreage to developed land.⁵⁷

Analysis

HB 715 codifies the agreement reached between interested parties after several years of discussing how to determine what part of Jekyll Island could be developed.⁵⁸ Much of the permissible developed land acreage has already been developed or the Act indicates certain acreage for specific new developments.⁵⁹ These developments are aimed at creation of public areas, including expansion of the campground.⁶⁰ However, the Act leaves twenty acres for development without restriction; allowing some flexibility for bringing investment to Jekyll Island⁶¹. As opposed to the 65/35 rule, the new definitions of “developed land” and “undeveloped land” may

52. *Id.*

53. JEKYLL ISLAND MASTER PLAN 2014, p. 24, available at www.jekyllisland.com/wordpress/wp-content/uploads/2014/02/JekyllIslandMasterPlanFinal.pdf.

54. O.C.G.A. § 12-3-243(a)(2)(B) (2013).

55. O.C.G.A. § 12-3-243.1 (Supp. 2014).

56. O.C.G.A. § 12-3-243.1(a) (Supp. 2014).

57. O.C.G.A. § 12-3-243.1 (Supp. 2014).

58. See Howard Interview, *supra* note 4; Interview with Lynn Smith, Chair, House Natural Resources and Environment Committee (Apr. 17, 2014) [hereinafter Smith Interview].

59. *Jekyll Island Legislative Oversight Committee Reviews Proposed Master Plan, Supports “Fixed Acreage” Solution*, JEKYLL ISLAND BLOG, Oct. 17, 2013, <http://jekyllisland.com/master-plan-update/>.

60. O.C.G.A. § 12-3-243(a)(1)(B) (Supp. 2014).

61. O.C.G.A. § 12-3-243(a)(1)(B) (Supp. 2014).

allow for further “wobble room,” while providing more definite guidelines.⁶²

Even though most of the land was already developed when the bill was passed, nothing in the Act requires the land to stay developed in the same way over time.⁶³ For example, what was developed as a golf course may later be developed as a recreational facility. This allows some flexibility for future development on the Island. While the Act leaves room for development, it states that the Jekyll Island Authority must maintain over 3,000 acres as undeveloped land. This includes an entire section of the Island’s southern end.⁶⁴ The undeveloped land will help preserve the ecosystem of the Island and allay fears of further erosion of the Island.⁶⁵ The Island contains beaches, forests, wetlands, and marshes, it is home to a variety of animals and plants.⁶⁶ Protecting these environments from encroaching development is crucial to maintaining Jekyll Island as an eco-tourism destination.⁶⁷

The fixed acreage is much simpler and less debatable than the 65/35 rule. Instead of stakeholders arguing about where the sixty-five percent line falls and what constitutes “land,”⁶⁸ the Act provides discernible limitations. The explicit acreage balances the competing interests of the conservationists and those who want to expand development on the Island. All the stakeholders in Jekyll Island came together and worked out a plan that satisfied their goals for the Island. The broad consensus behind the Act likely means that the fixed acreage will guide Jekyll’s future progress. Georgia bought Jekyll Island so its citizens could enjoy a barrier island park, and the Act helps the Jekyll Island Authority accomplish that purpose.⁶⁹

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62. Update: The Georgia Legislature Makes a Strong Push to Protect Jekyll Island, SUSTAINATLANTA, Mar. 14, 2014, <http://sustainableatlanta.com/2014/03/14/update-the-georgia-legislature-makes-a-strong-push-to-protect-jekyll-island/>.

63. Smith Interview, *supra* note 58.

64. O.C.G.A. § 12-3-243(a)(2)(B) (Supp. 2014).

65. See JEKYLL ISLAND MASTER PLAN 2014, p. 43–49, *supra* note 53.

66. See generally Cabin Bluff Land Management, *Jekyll Island Conservation Plan*, Natural Resource Profiles, Appendix D, available at www.savejekyllisland.org/CP_Appendix_D_Natural_Resource_Profiles.pdf.

67. JEKYLL ISLAND MASTER PLAN 2014, p. 43, *supra* note 53.

68. See SUSTAINATLANTA, *supra* note 62.

69. Smith Interview, *supra* note 58.