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CONSERVATION AND NATURAL RESOURCES

Environmental Protection: Metropolitan Rivers

CODE SECTIONS: O.C.G.A. §§ 12-5-443 (amended) and 12-5-445 (amended)

BILL NUMBER: SB 317

ACT NUMBER: 1250

SUMMARY: This Act amends the Metropolitan Rivers Protection Act to require that local governments seeking to override the recommendations of planning commissions in regard to developments in protected river corridors must obtain a finding from the Director of the Environmental Protection Division that the application is consistent with the corridor land and water use plan or will provide protection equivalent to the corridor use plan.

EFFECTIVE DATE: March 26, 1986

History

In the early 1970's state agencies and environmental interest groups began to recognize the importance of protecting the Chattahoochee River.¹ In 1972, the Atlanta Regional Commission (ARC) completed its first major study of the river and the impact of development on its environment.² The ARC developed a comprehensive protection plan for the river, but had no power to implement the plan or to enforce the needed protection.³

Pursuant to its power to enact legislation to protect "vital areas"⁴ of the state, the General Assembly's response came in the form of legislation designed to oversee and to regulate development along the river. In the 1973 session of the General Assembly, the Metropolitan Rivers Protection Act (MRPA) was enacted to protect Georgia rivers in major metropolitan areas which provide at least forty percent of the area's water supply.⁵ The

1. Atlanta Const., Dec. 16, 1985, at 6A, col. 1 (quoting Robert Kerr, Executive Director of the Georgia Conservancy).

2. Atlanta Const., Dec. 16, 1985, at 6A, col. 1.

3. Pope v. City of Atlanta, 242 Ga. 331, 332, 249 S.E.2d 16, 18 (1978).

4. GA. CONST. art. III, § 6, ¶ 2(a)(1) (1983).

5. 1973 Ga. Laws 128 (codified as amended at O.C.G.A. §§ 12-5-440—12-5-457 (Supp. 1985)).

Act, designed primarily to govern development on the Chattahoochee, "established a 2000-foot corridor on either side of the 48 miles of river from Buford Dam to Atlanta."⁶

In 1978, the constitutionality of the MRPA was challenged.⁷ The Georgia Supreme Court held the regulation of land use on the river to be a valid exercise of police power and determined that the MRPA did not unconstitutionally appropriate private property for public use without compensation.⁸

The Act was amended in 1983 to redefine buffer zones, to require local governments to adopt ordinances to protect the tributaries of the river, and to establish the Georgia Mountains Area Planning and Development Commission.⁹ Prior to the 1986 amendment, local governments had authority to make final decisions regarding the issuance of zoning and building permits. If a local government disagreed with the finding of the commission, it could override the recommendation by holding a public hearing on the application and proposed override of the commission's recommendation, followed by an affirmative vote of a two-thirds majority of the governing body.¹⁰ The override would not become effective until a second public hearing was held, followed by a similar affirmative vote of a two-thirds majority.

The override provision was not exercised, however, until 1985 when the City of Duluth permitted the building of a major commercial development on the river in spite of the ARC's finding that the development was not in compliance with the river protection plan.¹¹ It became apparent that state law must be strengthened to further discourage local governments from overriding ARC recommendations.¹²

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The Act does not do away with the override provision of the Metropolitan Rivers Protection Act, but it adds an additional step to the process required for such action. A local government must now obtain from the Director of the Environmental Protection Division of the Department of Natural Resources a written finding that 1) the application is consistent with the plan,¹³ or 2) if the application is not consistent with the recommended plan in all respects, the application will provide a level of land and water resource protection equivalent to the corridor use plan before

6. Atlanta Const., Dec. 16, 1985, at 6A, col. 5.

7. Pope v. City of Atlanta, 242 Ga. at 333, 249 S.E.2d at 18.

8. *Id.*

9. 1983 Ga. Laws 1059 (codified at O.C.G.A. §§ 12-5-440—12-5-457 (Supp. 1985)).

10. O.C.G.A. § 12-5-445(c)(2)(C) (Supp. 1985).

11. Atlanta Const., Nov. 13, 1985, at 9A, col. 5.

12. Atlanta Const., Dec. 16, 1985, at 8A, col. 1. Moreover, the editorial comment suggests that "a regional planning agency without teeth is a helpless creature." *Id.*

13. O.C.G.A. § 12-5-445(c)(2)(C) (Supp. 1986).

the decision of the local government is reaffirmed and made final.¹⁴ The decision of the Director may be appealed using the Procedures for Contested Cases provided by the Georgia Administrative Procedures Act.¹⁵

14. *Id.* § 12-5-445(c)(2)(D).

15. *Id.* § 12-5-445(d)(2).