



Safeguarding Our Rivers, Marshes, and Islands for Future Generations.

Honorable Sam Olens
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

May 1, 2013

Dear Mr. Olens:

We, the undersigned, represent organizational members of a collaborative known as Save Georgia's Coast. Our groups, representing thousands of Georgians, are deeply concerned about a matter fundamental to marsh protection, now under your review.

As you know, the Jekyll Island Authority (JIA) is preparing a Master Plan for the development and conservation of Jekyll Island. This work is being done under Georgia law that limits development of the state park to no more than 35% of the land area.

Last year, the JIA appointed a task force charged with determining how much of Jekyll Island is already developed. To make that finding, the task force not only carefully evaluated existing land uses to properly classify them as "developed" or not, it also considered factors vital to determining the total land area of the island.

After numerous meetings, many of which some of the cosigners attended, the task force adopted a set of recommendations for consideration by the Master Plan Steering Committee. Those recommendations were based on well-considered and well-established land classification standards in addition to the distinction in law between uplands and wetlands – most notably the tidal marshes as defined and protected under Georgia's Coastal Marshlands Protection Act (CMPA) of 1970.

Based on that assessment, the task force determined that there are 3,817 acres of upland on Jekyll. By their reckoning, more than 35% of the island is already developed. Notably, members of the task force upholding those recommendations included several JIA staff members.

Contrary to task force recommendations and associated findings, the JIA is now requesting that you determine that the reference "land area above mean high tide" should be applied to tidally-influenced marsh above that tide level when determining the island's land area. Such a misinterpretation of the scientifically, legally defined distinctions between wetland and land would, according to the JIA, add some 1,600 acres to the estimated land area of the island.

As a result of such an inappropriate interpretation, a net area of more than 100 additional acres of Jekyll Island could be developed, and a comparable area of upland now being conserved would be lost.

The effect of challenging the well-founded task force recommendations would be to shift development onto upland areas now devoted to conservation, compensating for that by falsely claiming high marsh – those jurisdictional marshlands above mean high tide – as if they were part of Jekyll’s 65% conserved area. In fact, those areas are already protected under the CMPA, as they are throughout coastal Georgia, and should not be ‘double-counted’ in meeting the 65% conservation requirement, as they surely would be under JIA’s proposal.

Further, there is a significant possibility that defining areas above mean high tide (but still within the tidal marsh jurisdiction) as “land” would have the effect of weakening the CMPA. In such a scenario, developers anywhere along the coast could demand legal exemption from marsh protections above mean high tide, based on the precedent of a similar allowance being afforded the JIA if you yield to their request.

Cumulatively, this risk could be significant – amounting to many thousands of acres of high marsh along our coast. Moreover, the 25-foot upland buffer along the marsh (established by Georgia’s Erosion and Sedimentation Control Act) could, in effect, be shifted onto the high marsh itself. These outcomes would substantially subvert marsh protection now provided under Georgia law.

We urge you to honor the definition of marshes under the CMPA, and at the same time establish a rational and scientifically defensible reference for calculating Jekyll’s “land area” by excluding tidally-influenced wetlands that lie above water at mean high tide, as intended by the 65/35 law.

Signed,

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David Kyler, Center for a Sustainable Coast
Emily Markesteyn, Ogeechee Riverkeeper
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