



Jekyll Island

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Jekyll Island is a 7.5 mile barrier island off the southeastern coast of Georgia. In 1886, the island was purchased by a group of millionaires for use as an exclusive, private retreat known as the “Jekyll Island Club.” The Jekyll Island Club flourished for nearly 50 years; however, the Club suffered financial difficulties in the late 1930s, and the 1942 season was the final season. In 1946, the State Revenue Commissioner, M.E. Thompson, led a commissioned study that determined the state wanted to purchase one of the coastal islands and open it to the public as a state park. Jekyll was selected as the best opportunity, but the remaining Club members refused to sell. On October 7, 1947, the State of Georgia purchased the island through a condemnation order for \$675,000.

In 1950, the General Assembly enacted the Jekyll Island State Park Authority Act (Act), which created and empowered the Jekyll Island State Park Authority (Authority) with all rights and powers necessary to hold as a lessee, to improve, maintain, beautify, repair, rebuild, increase, extend, subdivide, and sublease no more than one-third of Jekyll Island State Park. The Authority is comprised of a nine-member board of individuals from business, government, and education throughout the state. The Board is appointed by the Governor for four-year terms to set policy for the island’s operations. An Executive Director and three division directors oversee the operation, maintenance, and promotion of the island. The Board of Directors sets the policy for the island’s operation.

The original legislation granted the Authority a lease for 50 years. The Authority was specifically authorized “to do any other things necessary or proper to beautify, improve, and render self-supporting said island park, to make its facilities available to people of average income, and to advertise its beauties to the world.”

In 1953, the General Assembly amended the Act by providing that the Authority could only improve and lease no more than one-half of the land area which lies above high tide and changed the lease term for 99 years, beginning on February 13, 1950.

In 1956, the General Assembly passed a Resolution creating a Jekyll Island Study Committee, based on the recommendations made by the Legislative Economy Committee and due to the divergence of opinion as to the best possible method of solving problems connected to Jekyll Island. The Committee was charged with determining whether it would be in the best interest of the citizens of the state to make any changes in the present method of operation, or whether some other method should be used for the disposition of the island. However, there is no record of any Report and in 1957, Governor Griffin said during his State of the State address:

“Still with us is the perennial problem of what to do with Jekyll Island. I opposed its acquisition in the first instance because the State has no business running a beach resort. But it has been my view that since we have it we should make the best out of it we can. The wisest course the State could follow would be to divest itself of this property if the approximate cost could be recouped. I will not approve the expenditure of any more money for this undertaking except that appropriated to protect what the State has invested or to render it serviceable to the public. Should the General Assembly evolve a plan for administration of the island removed from the cross-fire of factional politics, the effort will have my support. It is my recommendation that residential or business lots should be leased or sold in fee simple. Beach and other day-use areas should be reserved permanently for public use.”

In 1963, the General Assembly amended the Act to specify that income arising out of the operation of the Park “shall be used by the Authority for the sole purpose of beautifying, improving, developing, enlarging, maintaining, administering, managing and promoting Jekyll Island State Park at the lowest rates reasonable and possible for the benefit of the ordinary people of the State of Georgia.”

It is interesting to note that it was not until 1971 that the General Assembly amended the Act to reduce the maximum amount of land the Authority is empowered to subdivide, improve, or lease from one-half to 35 percent of the land area which lies above water at mean high tide, provided that the Authority must not sell or dispose of any riparian rights and that the beaches must not be sold and be kept free and open for the use of the people of the State.

Governor Perdue signed House Bill 214 into law in May of 2007. This bill extended the Authority’s lease for an additional 40 years, created a Jekyll Island-State Park Authority Oversight Committee, revised the procedure for submission and adoption of a Master Plan amendment, restricted development to current usage on the southern portion of the land, and prohibited the Authority from selling any residential lots.

The first Master Plan was completed in 1996, as required by a 1995 law, and updated in 2004. The Master Plan must delineate the boundaries of the area(s) delineated on the Master Plan as the 65 percent of the land area of Jekyll Island which lies above water at mean (average) high tide. The Authority is currently in the process of completing another update of the Master Plan. The Carl Vinson Institute of the University of Georgia was hired by the Authority to develop the new Jekyll Island Master Plan. Several task forces were created to help collect public input, including Task Forces on Sustainability, Land Use, Transportation, Infrastructure, Historical & Cultural Assets, and the Environment.

The 65/35 Task Force (Task Force) was assembled and charged with making recommendations for creating the most accurate land use map based on current best practices and the best available data. The Task Force recommended that delineation of Jekyll’s land area for the Master Plan utilize different methods for the eastern and western shores due to differences in land cover and its impact on accuracy. The National Oceanic and Atmospheric Administration (NOAA)’s Mean Higher High Water (MHHW) was proposed for the eastern shore. Determining the best data set to measure the western side of the island was a greater challenge as the goal was to best delineate the interface between the upland and the marsh. Based on the assumption (and interpretation of State Representative Michael J. Egan’s 1971 65/35 law and other previous laws) that tidally-influenced marshland was not included in the island’s land mass and, therefore, the Task Force concluded that marshland should not be considered in the island size total for purpose of calculating the 65/35 distribution. The Task Force recommended that the DNR Coastal Marshland Protection Act (CMPA) jurisdictional boundary be used to define as clearly as possible the developable land area of the island. The Task Force recommended excluding marsh, which would bring the total acreage of the island’s land area to be 3,817 acres. The island size including the marsh is 3,924 acres.

The recommendations were different from the 1971 law and all land area measurements used in previous Master Plans, and yield a much smaller land area for Jekyll Island. The recommendation was then sent to the Attorney General for legal review.

The Attorney General issued an Official Opinion on the matter on June 27th of 2013, concluding that the Authority does not have the discretion to adopt the 65/35 Task Force recommendation to the extent that it uses a measurement reference point other than mean high tide. The Authority is entrusted with management and preservation of Jekyll on behalf of the State pursuant to a long-term lease from the State. Specifically included within the lease, as provided in law, is a description of Jekyll Island that describes it as such: "All of that island of the State of Georgia, County of Glynn, being known as Jekyll Island and the marshes and marsh lands adjacent and adjoining the same owned by the State of Georgia; being that island of 11,000 acres, more or less..." Therefore, the law considers marshland as part of Jekyll Island.

The Opinion also states that there is no language in the law directing that the measurement or survey exclude marsh or marshland, and such terms are not even mentioned in the law. The law references land area which lies above water a mean high tide. Both the U.S. Supreme Court and the Supreme Court of Georgia have recognized mean high tide as a standardized line of measurement in tidally-influenced areas. When so viewed, it is apparent that the intent of the legislature was to use mean high water as a measure of Jekyll's total area, rather than including or excluding certain areas based on their descriptive features. According to the Attorney General, excluding interior marsh areas from the total calculation of Jekyll would have the unintended consequence of excluding these areas from the total island area which is leased to the Authority, thus resulting in pockets of interior marsh areas that will not be included in either the 65 percent or 35 percent delineation of Jekyll.

Further, the Task Force's suggestion that two different measurements be utilized for the eastern and western shores is not supported by law. Had the legislature intended for the Authority to adopt the CMPA jurisdictional boundary as an element of measurement, it would have expressly indicated. The Attorney General also stated that any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. Of significance, the Attorney General also stated that the General Assembly could simply declare the size of the island or state precisely how much acreage is subject to development.

A draft Master Plan was released on September 15th of this year. The plan uses NOAA's mean high tide level and data to measure the total area of the island above mean high tide as approximately 5,530 acres with slightly over 1,609 (29 percent) developed. This leaves 326.53 acres remaining before reaching the 35 percent limitation. The Authority chose to replace the 4.3' mean high tide level adopted in 1996 with the 2.59' level currently recognized as the mean high tide mark by NOAA. The 1996 Master Plan notes that the 4.3' level was the elevation used by the Georgia DOT, and certified by the Corps of Engineers, for the construction permitting on the Jekyll Creek Bridge. This delineation is critical, as it profoundly affects the ratio of "developed" to "undeveloped" land area. The Plan also notes that it was suggested that the Georgia DNR's statutory jurisdiction line (elevation 5.6') be used, since it delineates the "estuarine area of the state," meaning all tidally influenced waters. The use of this line (which does not correspond to mean high water) would have resulted in a significantly smaller area of the island. As confirmation of the 4.3' mean high water value, an interpretation was requested from the National Ocean Services Bureau. The Bureau inferred a mean high water elevation of 3.4'. The Plan notes that adoption of this value would have had the effect of dramatically increasing the island's land area. The planning team concluded that the 4.3' level was most consistent with the intent of the statute. The planning team concluded that the total island land area above mean high water was 4,226 acres.

The current draft Master Plan update does not identify areas of future development besides a campground expansion. The plan discusses the possibility of seeking an amendment to current law to set a maximum acreage limit. If the Authority were to seek such legislative changes to set a maximum developed acreage, the Plan suggests 1,675 acres to be considered: 46 acres would be restricted for health, public safety, and public recreation purposes; 20 acres could be used for any purposes consistent with the law.

As required by law, the Authority provided a copy of the Master Plan to the Speaker of the House, President of the Senate, members of the Oversight Committee, and Office of Legislative Counsel. In the event the Oversight Committee files an objection to a proposed amendment to the master plan with the chairperson of the Authority prior to the Authority's taking action on the proposed amendment, then the same shall be stayed. Thereafter, by introduction of a resolution to consider the Committee's objection within the first 30 days of the next regular session of the General Assembly, the objection may be considered for ratification by the General Assembly. In the event the resolution is adopted by a vote of two-thirds of the members of each branch, the amendment to the master plan will not be adopted by the Authority. In the event the resolution is ratified by a vote of less than two-thirds of the members of either house, the resolution must be submitted to the Governor for approval or veto. In the event the resolution fails to pass both houses or is vetoed by the Governor, the amendment to the master plan may be adopted by the Authority and the stay of the committee shall be lifted. In the event of the Governor's approval of the resolution, the amendment to the master plan will be prohibited.

The Oversight Committee is set to meet on Jekyll Island to review the Master Plan on October 17th. The Board of the Authority is set to meet in November to adopt the Master Plan.