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The State Senate

Atlanta, Georgia 30344

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In pursuit of my duty to my constituents, as their State Senator, I would like to bring to the attention of the Legislative Oversight Committee a number of recent actions of the Jekyll Island Authority's Board of Directors in promoting the revitalization of Jekyll Island State Park that are inconsistent with the park's statutory purpose as a public facility set aside for the benefit of "the plain people" of Georgia.

1. The JIA's Board may have violated the "Gratuities" provision in the Georgia Constitution (Article 3, Section 6, Paragraph VI.) prohibiting a grant of "any donation or gratuity or to forgive any debt or obligation owing to the public..." in granting a rent abatement estimated to be in excess of \$10,000,000 to Trammell Crow and Partners as part of the project development agreement for the replacement of the Buccaneer Resort with a \$90,000,000 hotel/condo complex. Given the market value of the nine-acre oceanfront site of the hotel, and the projected profitability of this venture—both of which are made clear in the December 2006 marketing report commissioned by Trammell Crow, and produced by PKF Consulting, Inc.—the element of risk which the Board cited in rationalizing the abatement at the August 30th meeting between the JIA and the Legislative Oversight Committee is unjustified. The JIA, an "instrumentality of the state" of Georgia, therefore did not receive a value equal to the benefit granted in the above-cited abatement, thus rendering the arrangement an unconstitutional gratuity.

A similar situation may come to exist with Linger Longer's proposal for a combination of general obligation and revenue bonds totaling \$84,500,000 to cover infrastructure costs associated with the proposed town center. There is no justification for such a financial proposal in view of the attractiveness of the site to be redeveloped, the size of the profits to be enjoyed by Linger longer in selling condominiums on publicly-owned land. Such a proposal is also inconsistent with the duty of the Authority under OCGA 12-3-271, which enjoins the Authority that "all income and revenues arising out of the operation of Jekyll Island State Park, and all gifts, grants, appropriations, or bond or loan proceeds made specifically for Jekyll Island State 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 people of the State of Georgia."

2. In its effort to promote the much-needed redevelopment of some of the park's oceanfront hotels, the Board has taken the position that modestly-priced lodgings do not belong on prime beachside property, but rather in the interior of the island. To quote Board Chairman Ben Porter, "the Board will try to make sure that rooms are available to low-budget visitors. This will likely be done by inviting hotel companies to build accommodations in the park's interior – no one expects beachfront rooms to cost less than \$170 per night." JIA Legal Counsel George Zier, in response to the question, "Does the JIA feel

that rate caps can be imposed upon developers?” said that, “Rent controls can be very tricky. The hotel rates will be market driven. Rates below the profitability floor would require government subsidy.” Board member Steve Croy added that “the Board will not be able to induce developers to build economy hotels on the beachfront.... Georgians will find beach rooms at sites where they can afford them, or they will find alternative, enjoyable sites for their vacations.” (JIA Board meeting, 9 July 2007).

This kind of thinking is reflected in policy shown by the Board’s approval of the replacement of the affordable Buccaneer Resort by Trammell Crow and partners, where room rates averaged \$89 per night during the years 2002-2006, with a 540-room upscale hotel, where room rates will average double that amount in the off-season and \$250 per night during the summer months. Add to these 540 rooms the 400 high-end rooms proposed by Linger Longer for its Jekyll town center, along with the 157 existing rooms at the upscale Jekyll Island Club Hotel, and the park will have well over half of its lodgings priced beyond the means of most Georgians.

Redeveloping the park’s hotel accommodations as described above is clearly to the disadvantage of Georgians “of average income,” and at odds with law dealing with Jekyll_Island State Park’s affordability, specifically OCGA.12-3-235(14), which empowers the Authority to do whatever is “necessary or proper to beautify, improve, and render self-supporting the island park, to make its facilities available to people of average income, and to advertise its beauties to the world.” (emphasis added)

The Board’s recent adoption of a policy on hotel accommodations fails to come to terms with what affordability means in a state park context. The policy calls for “private providers of lodgings to offer a range of rooms that include mid-market (3-star) and a substantial number of moderately-priced hotels (2-star and 1-star).” The words “substantial number” could mean anything, moreover, the “star” system of rating cited by the Board is based upon the level and quality of the services and amenities hotels provide, and does not consider the average daily rates charged by the hotels rated, according to Michael Ciapciak, Manager of Quality Assurance Team, Mobil Travel Guide, Chicago, Illinois. One 3-star hotel (mid-market), for example, may have a room rate of \$200 per night, another may charge \$125 per night. The dramatic difference between the room rates to be charged at the pair of 3-star hotels soon to be built on the sites of Jekyll’s former Buccaneer Resort and Holiday Inn illustrates his point clearly.

3. The Board is currently considering a proposal by Linger Longer Communities which calls for a beachside Jekyll town center that would result in the elimination of the state park’s most popular oceanfront public parking lots. "To put surface lots [there] is a waste of that land. It would be more desirable for hotels, retail and residences," said JIA spokesman Bill Crane (*Georgia Times-Union*, 26 October 2007). The elimination of these much-used public facilities would be to the disadvantage of the tens of thousands day-visitors who visit the park annually and inconsistent with the provisions of OCGA 12-3-235 (14), as quoted above.

4. The Board has failed to take into account the environmental impact of a beachside community of the scale proposed by Linger Longer. The Board is obligated to consider such impacts pursuant to the

provisions of OCGA 12-16-4 (see Attachment A), which call upon the government agency involved “to determine if a proposed governmental action...may significantly adversely affect the quality of the environment,” and, if so determined, “to prepare an environmental effects report” which would describe the impact of the proposed action and how to deal with these effects.

5. The proposed Jekyll town center includes 14 acres, currently designated as a “nature preserve,” that lie within the park’s 65% protected zone. Acceptance of all or any part of this segment of the proposal

would require a redrawing of the existing 65/35 map and would constitute an amendment of the park's Master Plan. Accordingly, the Authority would have to comply with sections 12-3-243.1 of the GA Code (see Attachment B) beginning with the submission of "a complete copy of the proposed amendment to the Speaker of the House, President of the Senate, members of the Jekyll Island State Park Authority Oversight Committee, and Office of Legislative Counsel at least 60 days prior to the date of the meeting at which the proposed amendment will be considered."

Recommendations

It is my hope that the Legislative Oversight Committee, upon consideration of the findings enumerated above, will, in a timely manner, act upon the following recommendations:

- 1.** Seek an Official Opinion of the Attorney General on the question of the power of the Jekyll Island Authority to grant rent abatements or other subsidies to persons and corporations leasing property in the State Park from the Authority. Included among such subsidies the Attorney General should be asked about: a) the Constitutionality of a sale of bonds by the Jekyll Island Authority at the prescription of a party to whom the Authority is leasing property, when the proceeds of the sale of such bonds is to be used for the improvement of that leased property, and b) the legality of granting a rent abatement to a party for hotel redevelopment on nine acres of prime oceanfront property in light of OCGA 12-3-271, which calls for the Jekyll Island Authority to develop the park "at the lowest rates reasonable and possible for the benefit of the people of the State of Georgia."
- 2.** Seek an Official Opinion of the Attorney General in regard to that portion of the GA Code OCGA 121-3-235(14), calling for Jekyll Island State Park to be available to and affordable for people of average income, specifically in light of the Authority's failure to exercise its power in behalf of the interests of Georgians "of average income" in its pursuit of the redevelopment of the hotel and other lodging facilities at Jekyll Island State Park.
- 3.** Seek an Official Opinion of the Attorney General in regard to the applicability of the Environmental Policy Act, OCGA 12-16-1 et. seq., to the actions of the Jekyll Island Authority, specifically its duty to prepare an "environmental effects report" pursuant to that statute's requirements.
- 4.** Notify the Board of the Jekyll Island Authority of its duty to conform to the provisions of OCGA 12-3-243.1, in which notice of changes to the Master Plan for Jekyll Island must be submitted to the Overview Committee.

In conclusion, I want to thank you, my colleagues, for your time and service on this Oversight Committee, charged with protection of the interests of our state and its people in the management of our Jekyll Island State Park, which is, as I said above, in my Senatorial District. This task is of greater importance today than at any other time in the history of the state's stewardship of this natural treasure, and I am confident in your abilities as members of the General Assembly to vigorously protect the

interests of the state in this enterprise. I urge that you pursue the notification and queries that I have suggested in my Recommendations. Of course, if it is the wisdom of your committee to seek these needed protections via other means that you may find more suitable, I defer to your judgment as to what methods you make elect to use.

Because of the importance of these matters to the people of Senate District 3, and to myself, as their elected representative, I must respectfully notify you that it is my intention to pose the queries and make

the notices that I have suggested in my Recommendations, above, in the event that I believe that the laws of this state are not being enforced.

Sincerely,



Jeff Chapman
District 3

Attachment A

§ 12-16-4. Determination of adverse effect on quality of environment; environmental effects report; consultation with other agencies; publication of notice of proposed action

(a) The responsible official of the government agency shall determine if a proposed governmental action is a proposed governmental action which may significantly adversely affect the quality of the environment. If the responsible official determines that the proposed governmental action is a proposed governmental action which may significantly adversely affect the quality of the environment, the government agency responsible for such project shall prepare an environmental effects report including, but not limited to, a discussion of:

- (1) The environmental impact of the proposed governmental action;
 - (2) Alternatives to the proposed governmental action, including no action;
 - (3) Any adverse environmental effects which cannot be avoided if the proposed governmental action is undertaken;
 - (4) Mitigation measures proposed to avoid or minimize the adverse impact of the proposed governmental action;
 - (5) The relationship between the value of the short-term uses of the environment involved in the proposed governmental action and the maintenance and enhancement of its long-term value;
 - (6) The effect of the proposed governmental action on the quality and quantity of water supply;
 - (7) The effect of the proposed governmental action on energy use or energy production; and
 - (8) Any beneficial aspects of the proposed governmental action, both short-term and long-term, and its economic advantages and disadvantages.
- (b) Prior to the issuance of the environmental effects report, the responsible official should consult with and obtain the comments of any agency which has jurisdiction by law, special expertise, or other interest with respect to any environmental impact or resource. (c) At least 45 days prior to making a decision as to whether to proceed with a proposed governmental action which may significantly adversely affect the quality of the environment, the

responsible official shall publish in the legal organ of each county in which the proposed governmental action or any part thereof is to occur notice that an environmental effects report has been prepared. The responsible official shall provide a copy of the environmental effects report and all other comments to the director. The responsible official shall also make the environmental effects report available to the public and to counties, municipalities, institutions, and individuals, upon request. **HISTORY:** Code 1981, § 12-16-4, enacted by Ga. L. 1991, p. 1728, § 1.

Attachment B

O.C.G.A. § 12-3-243.1 (2007)

§ 12-3-243.1. Master plan as to Jekyll Island; creation; contents; notice and hearing on preliminary plan; adherence to plan; amendments

(a) 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. The master plan shall delineate, based upon aerial survey, the present and permitted future uses of the land area of Jekyll Island which lies above water at mean high tide and shall designate areas to be managed as environmentally sensitive, historically sensitive, and active use areas. The master plan shall also delineate the boundaries of the area or areas delineated on the master plan as the 65 percent of the land area of Jekyll Island which lies above water at mean high tide and over which the authority has no power to improve, lease, or sell pursuant to subsection (a) of Code Section 12-3-243. If the aerial survey demonstrates that the percentage of undeveloped land on Jekyll Island is presently less than 65 percent, then no further development of undeveloped land shall be permitted in the master plan

(b) In the creation of the master plan, the authority shall, after preparation of a preliminary plan, give notice of the existence of the preliminary plan in the legal organs of Glynn and Fulton counties and in at least two newspapers of state-wide general circulation not less than 60 days prior to the meeting of the authority at which the preliminary plan is to be considered for final adoption. After giving this notice, the authority shall hold a public hearing at a convenient location on Jekyll Island and receive and consider such oral and written comments on the preliminary plan as may be presented.

(c) The authority, in the exercise of its authority to develop, manage, preserve, and protect Jekyll Island, shall be guided by and shall adhere to the master plan as the same may from time to time be amended as provided in subsection (d) of this Code section.

(d) The authority may, from time to time, amend the master plan but only in compliance with the following procedure:

(1) Any proposed amendment to the master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the authority;

(2) After the proposed amendment is presented publicly at a regular meeting of the authority, a brief summary of the proposed amendment shall be advertised in the legal organs of Glynn and Fulton counties, distributed to the media by news release, and published in appropriate publications of the authority. Each such advertisement, news release, and publication shall also contain:

(A) The time and place of the public hearing on the proposed amendment, which public hearing shall be held no earlier than 15 days after the latest publication of the advertisement in the legal organ of Glynn or Fulton County as required by this paragraph;

(B) Directions as to the manner of receiving comments from the public regarding the proposed amendment; and

(C) The date on which the meeting of the authority at which the proposed amendment will be considered for approval or rejection, which meeting shall not be held any sooner than 30 days after the meeting of the authority at which the proposed amendment was announced pursuant to paragraph (1) of this subsection;

(3) The authority shall transmit by certified mail or personal service copies of the information required by paragraph (2) of this subsection and a complete copy of the proposed amendment to the Speaker of the House, President of the Senate, members of the Jekyll Island--State Park Authority Oversight

Committee, and Office of Legislative Counsel at least 60 days prior to the date of the meeting at which the proposed amendment will be considered. The presiding officers of each house, or the Office of Legislative Counsel if a presiding officer is unavailable, shall then provide copies to any member of the General Assembly who makes, or has made, a standing written request;

(4) In the event the Jekyll Island--State Park Authority 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 shall 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 shall 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 shall be prohibited;

(5) Any proposed changes to the boundaries of the area or areas delineated on the master plan as the 65 percent of the land area of Jekyll Island which lies above water at mean high tide and over which the authority has no power to improve, lease, or sell pursuant to subsection (a) of Code Section 12-3-243 shall be surveyed and marked at least seven days prior to the public hearing required by paragraph (2) of this subsection in such a fashion as to be readily discernible on the ground by members of the public; and

(6) At the meeting of the authority which has been identified in the advertisement required by paragraph (2) of this subsection as the meeting to consider the approval or rejection of the proposed amendment, the authority shall consider in an open and public meeting the proposed amendment to the master plan which, if approved, shall become a part of the master plan, subject, however, to the provisions of paragraph (4) of this subsection.

HISTORY: Code 1981, § 12-3-243.1, enacted by Ga. L. 1995, p. 105, § 13; Ga. L. 1996, p. 6, § 12; Ga. L. 2001, p. 4, § 12; Ga. L. 2007, p. 711, § 8/HB 214.