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PRESS ADVISORY

Attorney General Olens Issues Jekyll Island Authority Opinion

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Today Attorney General Sam Olens released an Official Opinion responding to a request from the Jekyll Island Authority (JIA) on the question of whether the recommendation of the so-called “65-35 Task Force” can be legally considered by the JIA in determining the total land area of the island.

The Task Force, which was composed of volunteers and JIA staff, was asked among other things to make a recommendation for measuring the island that would assure compliance with the Georgia law which requires that only 35% of the land area of Jekyll Island be available for development and that 65% of the land area remain undeveloped.

In its proposal for measuring the island, the Task Force recommended:

- excluding all marsh from any measurement of the island;
- using the Mean Higher High Water mark as the measurement for the eastern shore; and
- using the 4.89’ Coastal Marshlands Protection Act jurisdictional boundary for the western shore.

After careful consideration and review, the Attorney General has opined that “while some may view the Task Force’s recommendation as commendable from a policy perspective, it is not supported by the applicable statutes.” Georgia law specifies that “Mean High Tide” is the measurement that should be used to calculate the land area of Jekyll Island. Because the Task Force recommendation uses measurements other than Mean High Tide, its recommendations are inconsistent with Georgia law and cannot be used.

Additionally, the statutes governing Jekyll Island do not define “land area.” Nothing in the law supports a finding that marshes should be treated differently than beaches, dunes, wetlands or other distinct features that are affected by the ebb and flow of the tides. Just because these features may be used in the calculation of the land area of the island if they fall above the Mean

High Water mark, however, does not mean they are subject to development. The marshes, for example, are protected from development in accordance with various federal and state laws, including the Coastal Marshlands Protection Act. Likewise, the beaches on Jekyll Island are specifically protected by statute.

The Attorney General emphasized in the Opinion that his role is not to make a policy determination, but to provide a strictly legal answer to the JIA's question by interpreting the statute as it is written. However, given the historic importance of Jekyll Island to the people of Georgia, as well as the potential for future litigation, the Attorney General has suggested to the JIA that no action be taken that would increase the land area of the island without an opportunity for the public and the General Assembly to provide input.