

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

CENTER FOR A SUSTAINABLE COAST; and
KAREN GRAINEY,

Plaintiffs,

v.

NATIONAL PARK SERVICE, U.S. Department
of the Interior; and GARY INGRAM, in his official
capacity as Superintendent, Cumberland Island
National Seashore,

Defendants.

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Case No. **2:19-cv-58**

COMPLAINT

Nature of Action

1.

The legislation designating Cumberland Island a National Seashore, (the “Seashore Act”), requires the island to be “permanently preserved in its primitive state,” with the exception of development for certain public recreation activities. But the Superintendent of Cumberland Island National Seashore signed a statement notifying Georgia Coastal Resources Division that the National Park Service does not object to the construction of a dock by a private property owner within the National Seashore. The Park Service’s statement of no-objection to the construction of a private dock was in violation of the Seashore Act. Plaintiffs seek an order setting aside the Park Service’s statement of no objection.

Jurisdiction

2.

This action arises under the Cumberland Island National Seashore enabling act, (the “Seashore Act”), 16 U.S.C. §§ 459i–459i–9, and the Administrative Procedure Act, (“APA”), 5 U.S.C. §§ 701-706. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and it may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

Venue

3.

Venue is proper in this Court because Cumberland Island National Seashore is in Camden County, Georgia in this district. 28 U.S.C. § 1391(e).

Parties

4.

Center for a Sustainable Coast is a 501(c)(3) organization dedicated to ensuring the responsible use, protection, and conservation of coastal Georgia's natural, historic and economic resources. Center for a Sustainable Coast brings this action on behalf of itself and its members who have been and will be injured by the National Park Service’s statement of no-objection to the construction of a private dock in Cumberland Island National Seashore, issued in violation of the Seashore Act.

5.

The members of Center for a Sustainable Coast use and enjoy Cumberland Island National Seashore for aesthetic, recreational, ecological, and biological values. The private dock within Cumberland Island National Seashore adversely impacts the use and enjoyment of these values by the members of Center for a Sustainable Coast.

6.

The members of Center for a Sustainable Coast have been and will be injured as a result of the National Park Service's violation of the Seashore Act. This violation creates an increased risk of and actual harm to the environment. These injuries would be redressed by the relief sought. Center for a Sustainable Coast's interests in this action fall within the zone of interests protected by the law sought to be enforced in this case.

7.

Karen Grainey is a member of Center for a Sustainable Coast and a resident of Georgia who uses and enjoys Cumberland Island National Seashore for aesthetic, recreational, ecological, and biological values. Karen Grainey has been and will be injured as a result of the National Park Service's violation of the Seashore Act. This failure creates an increased risk of and actual harm to the environment which can be redressed by this Court. These injuries would be redressed by the relief sought.

8.

The National Park Service (“NPS”) is an agency of the United States Department of the Interior, with responsibility for, *inter alia*, the conservation and protection of National Parks and National Seashores in the United States, including Cumberland Island National Seashore.

9.

Defendant Gary Ingram is sued in his official capacity as National Park Service Superintendent of Cumberland Island National Seashore.

Statement of Facts

10.

Recognizing the importance of preserving and maintaining Cumberland Island in its natural state, Congress established the Cumberland Island National Seashore in 1972.

11.

The boundaries of Cumberland Island National Seashore encompass the entire island.

12.

The Seashore Act gives the Park Service regulatory authority over non-federally owned lands within the bounds of Cumberland Island National Seashore, including State-owned marshlands.

13.

As a national seashore, Cumberland Island is managed by the NPS.

14.

The Seashore Act requires Cumberland Island to be “permanently preserved in its primitive state,” with the exception of development for certain public recreation activities. 16 U.S.C. § 459i-5(b).

15.

Lumar, LLC owns property within the boundaries of Cumberland Island National Seashore.

16.

Lumar, LLC sought permission from Georgia Coastal Resources Division and the U.S. Army Corps of Engineers (“Corps”) to build a dock over marshlands within Cumberland Island National Seashore.

17.

Georgia Coastal Resources Division asked Lumar, LLC’s adjacent property owners to state whether they concurred or objected to the dock.

18.

The Adjacent Property Owner Notification provides two form responses for an adjacent property owner. The adjacent property owner can either (a) state they “do not have any objections for the project as proposed,” or (b) “object to the issuance of a permit for the proposed work,” and explain the reasoning behind the objection.

19.

NPS Superintendent Gary Ingram signed a statement on behalf of NPS, notifying Georgia Coastal Resources Division, “As an adjacent property owner, I have been informed of the intended construction and reviewed the plans and I do not have any objections to the project as proposed.”

20.

The notification of no-objection increased the likelihood that Georgia Coastal Resources Division and the Corps would grant Lumar, LLC authorization to construct the dock.

21.

After receiving NPS’ notification of no-objection, Georgia Coastal Resources Division: a) issued a Letter of Authorization to Lumar, LLC to build the dock; and b) provided a notice of concurrence and no objection for the Corps to issue Lumar, LLC a Letter of Permission to build the dock.

22.

In reliance on Georgia Coastal Resources Division’s concurrence, the Corps issued a Letter of Permission to Lumar, LLC to build the dock.

23.

Plaintiffs alleged, in a separate lawsuit filed in Fulton County Superior Court, that Lumar, LLC violated Georgia’s Coastal Marshlands Protection Act by constructing the dock without a Coastal Marshlands Protection Act permit. Case No. 2019-CV-317139.

24.

The Coastal Marshlands Protection Act states that the Superior Court, upon finding that any person is or has been violating any of the provisions of the Coastal Marshlands Protection Act, “may order the person to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland.” O.C.G.A. § 12-5-291(a)(5).

25.

If Plaintiffs prevail in the Fulton County case, Lumar, LLC will need to seek a permit from Georgia Coastal Resources Division to construct or maintain the dock on Cumberland Island. If Plaintiffs prevail in the above-styled case and the Court sets aside NPS’ notification of no-objection to the dock, Georgia Coastal Resources Division will be less likely to issue a permit to Lumar, LLC.

Count I – Violation of Cumberland Island National Seashore Enabling Act

26.

The Seashore Act states, “the seashore shall be permanently preserved in its primitive state” (with an inapplicable exception for certain public recreation activities). 16 U.S.C. § 459i-5(b).

27.

Lumar, LLC’s dock is over State-owned marshlands within Cumberland Island National Seashore.

28.

Defendants' notification of no-objection was issued in violation of the Seashore Act's mandate to permanently preserve Cumberland Island National Seashore in its primitive state.

29.

Defendants' notification of no-objection increased the likelihood that Lumar, LLC would construct a dock within Cumberland Island National Seashore.

30.

The Lumar, LLC dock is incompatible with preserving the primitive state of Cumberland Island.

31.

The Lumar, LLC dock adversely impacts the ecology of Cumberland Island National Seashore.

32.

Defendants provided no rational explanation for ignoring the mandate of the Seashore Act.

33.

Defendants' notification of no-objection was final agency action.

34.

Defendants' notification of no-objection was in violation of the Seashore Act.

35.

Defendants' notification of no-objection was arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Enter a declaratory judgment that Defendants' action was arbitrary and capricious, an abuse of discretion, and contrary to the Seashore Act;
- (b) Set aside Defendants' notification of no-objection;
- (c) Award Plaintiffs the costs and expenses of this action, including reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and
- (d) Grant such other relief as the Court deems just and proper.

Respectfully submitted May 3, 2019.

Robert Jackson – GA Bar #387750
Attorney for Plaintiff Center for a Sustainable Coast
ROBERT B. JACKSON, IV, LLC
260 Peachtree Street - Suite 2200
Atlanta, Georgia 30303
Telephone: (404) 313-2039
E-Mail: rbj4law@gmail.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I (a) PLAINTIFFS

CENTER FOR A SUSTAINABLE COAST and KAREN GRAINEY

(b) County of Residence of First Listed Plaintiff Glynn
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert Jackson, ROBERT B JACKSON, IV, LLC
260 Peachtree St. Suite 2200, Atlanta GA 30303 (404) 313-2039

DEFENDANTS

NATIONAL PARK SERVICE, U.S. Department of the Interior; and
GARY INGRAM

County of Residence of First Listed Defendant Washington, D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney's Office, S.D. Georgia
22 Barnard St., Suite 300, Savannah, GA 31401 (912) 652-4422

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTIES	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROCEEDINGS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
16 U.S.C. §§ 459i-459j-9

Brief description of cause:
Defendants violated the the Cumberland Island National Seashore enabling act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/03/2019

SIGNATURE OF ATTORNEY OF RECORD

Robert B. Jackson, IV

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE