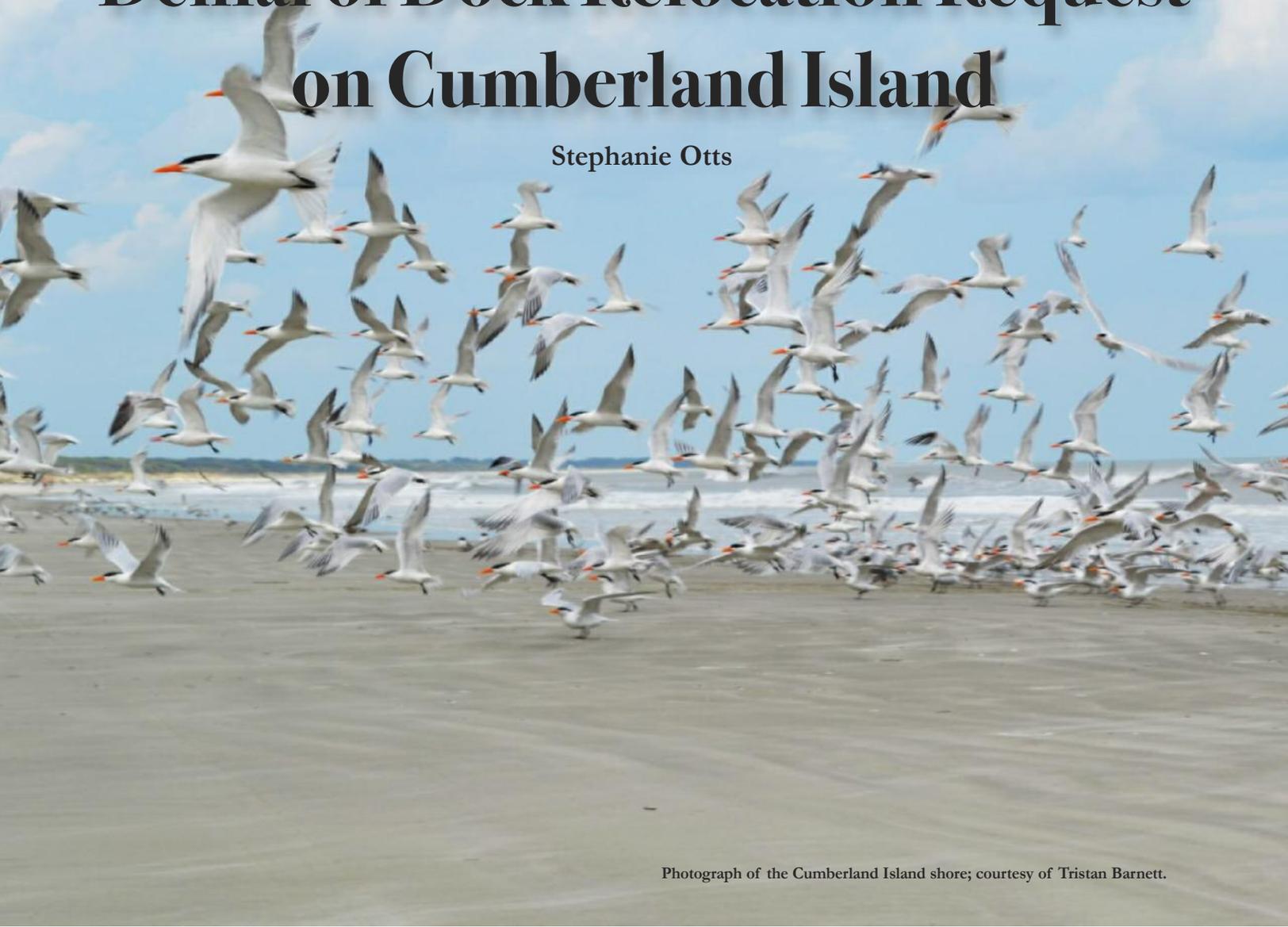


# Eleventh Circuit Upholds Denial of Dock Relocation Request on Cumberland Island

Stephanie Otts



Photograph of the Cumberland Island shore; courtesy of Tristan Barnett.

**Cumberland Island, Georgia's largest barrier island,** was once the private playground of wealthy industrialists, most notably the Carnegie family. Although Cumberland Island continues to attract the rich and famous – John F. Kennedy, Jr. was married at the Greyfield Inn, a converted historic mansion still owned and operated by the Carnegie family – it now belongs to all of us. The federal government began acquiring land from private property owners on Cumberland Island in the early 1970s, and Congress established Cumberland Island National Seashore in 1972.

Acquisition efforts continued after the seashore designation, and the federal government now owns a significant portion of the island.

The enabling legislation for Cumberland Island National Seashore authorized the Secretary of Interior to acquire lands within the boundaries of the national park through a variety of means, including purchase and donation. As part of these negotiations, the Secretary could grant private property owners a right of use and occupancy for noncommercial residential

property. A long running dispute between the National Park Service (NPS) and a family with reserved rights on Cumberland Island recently reached the Eleventh Circuit Court of Appeals.<sup>1</sup>

### **Brick-Kiln Dock**

Charles Chandler, son of Coca-Cola founder Asa Candler, purchased property on the northern end of Cumberland Island in 1930. The Chandler family's holding eventually increased to 1,300 acres and included a 38-acre parcel known as the High Point Compound. In the 1950s, the Chandlers sought and received permission from the Carnegie family to build Brick-Kiln Dock in one of their tracts of land to provide easier access to the Compound. The dock, which is located on Hawkins Creek approximately 3.5 miles and a 15-minute drive from the Compound, provided deepwater access to the island.

The Chandler family agreed to convey its property to the NPS in 1982. The sale agreement reserved the family's right to occupy High Point Compound and use Brick-Kiln Dock until the death of the last surviving named shareholder of the family corporation (High Point LLLP). Due to natural changes in tidal flows that have increased siltation around the dock, downstream portions of Hawkins Creek are currently too shallow for passenger vessels to navigate. According to the Chandlers, Brick-Kiln Dock will soon "be completely unusable as a deepwater dock."

In June 2008, High Point sought permission from the NPS to move the dock to a more navigable bend in Hawkins Creek, approximately 50-100 yards away. The NPS denied the request on the ground that the deed conveying the property to the federal government did not grant High Point a right to move the dock. In the absence of such a grant, the NPS asserted that the Wilderness Act of 1964 prohibited relocation of the dock.

Congress mandated that Cumberland Island National Seashore "be permanently preserved in its primitive state," although some limited development is allowed within the seashore to facilitate public recreation.<sup>2</sup> In 1982, Congress designated 8,840 acres of seashore as wilderness under the Wilderness Act and 11,718 as potential wilderness. In 2004, Congress

amended the wilderness boundaries to encompass 9,886 acres of designated wilderness and 10,500 acres of potential wilderness. The land upon which a portion of Brick-Kiln Dock sits is designated wilderness, and the marshlands under the dock are designated potential wilderness. With limited exceptions for existing public rights, no structures are allowed within designated wilderness areas.

Proposals floated back and forth among the parties for years. High Point proposed alternative locations or the extension of the existing dock. The NPS suggested that family members and their guest could gain access via the island's public docks or High Point could improve conditions by dredging Hawkins Creek. High Point argued that use of the public docks was unacceptable because it would force the family to compete with the public for dock space and increase travel time to the Compound by 30 minutes to 1 hour. High Point dismissed the dredging option as too expensive.

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When the NPS declined to reconsider its decision after a 2012 request, High Point filed suit. High Point sought judicial review of the NPS's denial of High Point's request under the Administrative Procedure Act (APA). High Point also challenged the authority of the NPS to regulate the state-owned marshlands under the dock. The district court sided with the NPS, finding that the deed prohibited High Point from moving the dock without the NPS's permission and that the Wilderness Act prohibited the NPS from authorizing construction in a wilderness area. The

district court also quickly dismissed High Point's claim that the NPS had no authority over the marshlands. The NPS has clear statutory authority to regulate non-federal lands within the boundaries of national parks. High Point appealed to the U.S. Court of Appeals for the Eleventh Circuit.

### Reserved Rights

On appeal, the Eleventh Circuit reviewed the language of the deed conveying High Point's property to the United States. High Point argued that the deed unambiguously reserved to High Point the right to unilaterally move Brick-Kiln Dock to maintain deepwater access. High Point's argument was based primarily on two provisions. High Point first cited the deed's express reservation to High Point shareholders of the use "of the area presently known as Brick-Kiln Dock located on Hawkins Creek in Tract N-5."<sup>3</sup> The deed also provided that buildings or structures "deteriorated by the elements ... may be maintained, repaired, renovated, remodeled, or reconstructed so long as the basic character of the building or structure is not materially altered."<sup>4</sup> High Point was essentially urging the court to broadly interpret these clauses to find a reserved right to use the entirety of Tract N-5 for deepwater access and permission to reconstruct the dock in a different location within Tract N-5.

The court was not persuaded that the deed language supported High Point's broad interpretation. As for the first provision, the court stated that a "straightforward reading of the deed language demands the conclusion that High Point reserved only a right to *use* – not to move or extend – the Dock as it was 'presently known' at the time of the conveyance."<sup>5</sup> The court found the second provision inapplicable, as the relocation or extension of Brick-Kiln Dock would materially alter its basic character. High Point's reserved rights are therefore limited to the use of Brick-Kiln Dock as it existed at the time of the conveyance and NPS approval is required for significant alterations.

### NPS Denial of Relocation Request

After concluding that High Point was required to seek NPS approval to move or extend Brick-Kiln Dock, the court turned to High Point's claim that the agency's

denial of their request was arbitrary and capricious under the APA. The Wilderness Act requires federal agencies to preserve the "wilderness character" of designated wilderness areas.<sup>6</sup> No structure or installation is permitted within a wilderness area, unless it falls within one of two exceptions. Structures may be allowed if "subject to existing private rights" or "necessary to meet minimum requirements for the administration of the area."<sup>7</sup>

High Point argued that the NPS had the authority to permit relocation or extension of Brick-Kiln Dock, because it had a private right of deepwater access to Cumberland Island. The court disagreed, reiterating that the deed reserved only a right to use Brick-Kiln Dock. The deed does not contain any reference to a broader right of deepwater access. The only "existing private right" held by High Point is in the use of Brick-Kiln Dock itself. The NPS's denial of High Point's request on the basis of the Wilderness Act was therefore not arbitrary and capricious.

### Conclusion

Battles between private property owners and the NPS within national parks are more common than one might imagine. Acquisition of land for national parks happens in many different ways, both before and after the creation of the park. As illustrated by this case, the language of the deed conveying the property to the federal government will control the outcome of most disputes. It is therefore critically important that conveyance documents accurately and clearly express the terms of the negotiated agreement between the property owners and the NPS. 🐼

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### Endnotes

1. High Point, LLLP v. National Park Service, 850 F.3d 1185 (11th Cir. 2017).
2. 16 U.S.C. § 459i-5(b).
3. *High Point*, 850 F.3d at 1194.
4. *Id.* at 1194-95.
5. *Id.* at 1194.
6. 16 U.S.C. § 1133(b).
7. *Id.* § 1133(c).