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## **Judges uphold decision on Candler dock**

**A federal appellate judge recently upheld the decision of a U.S. District Court, affirming that the Candler family does not have a reserved right to relocate or extend the Brick-Kiln dock on Cumberland Island and the National Park Service does have the authority to deny their request to alter the dock. The Candlers, who use the dock to access their compound at High Point, had asked to move the dock on Hawkins Creek or extend it to Brickhill River. The park service has suggested that the Candlers use the public Plum Orchard dock.**

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A federal appellate judge recently upheld the decision of a U.S. District Court, affirming that the Candler family does not have a reserved right to relocate or extend a dock on Cumberland Island and the National Park Service does have the authority to deny their request to alter the dock. “The Candler family, which uses the dock to access property located within the boundaries of Cumberland Island National Seashore, has sought to move or extend the dock to improve its accessibility,” Judge Robin Rosenbaum wrote in the March 8 decision. “But the National Park Service, which manages the seashore, has refused to allow changes to the dock in order to protect the island’s wilderness character.” Rosenbaum heard the case with judges Lewis Kaplan and Gerald Bard Tjoflat. The Candlers contend that the dock — located on Hawkins Creek near High Point on the north end of the island — is inaccessible to most vessels because sediment and siltation have made the water too shallow. The family asked the park service in June 2008 for permission to move the dock about 50 to 100 yards north. Their request was denied and they spent four years trying to negotiate before filing suit through High Point LLLP against the park service and several agency officials in May 2012. “So the family has sued, arguing that the deed by which the Candlers conveyed the island property to the government and reserved the right to continue to use the dock permits them to relocate the

dock. Alternatively, the family contends that the park service's denial of permission to relocate or extend the dock is arbitrary and capricious, in violation of the Administrative Procedure Act. After careful review and with the benefit of oral argument, we must conclude that 'nothin's gonna change' from the district court's decision, since neither the deed nor federal law supports the Candler's position," Rosenbaum wrote, borrowing a line from Otis Redding's song "(Sittin' on) The Dock of the Bay." Candler on Cumberland Rosenbaum lays out the facts of the case in a 33page decision, including the Candler family's history on Cumberland Island. Charles Howard Candler Sr., the oldest son of Coca-Cola founder Asa Candler, first purchased land on the north end of Cumberland in 1930. The family later owned about 1,300 acres total on the barrier island, including a 38-acre parcel called the High Point compound. At High Point, the Carnegies owned a nearby tract and let the Candler's build Brick-Kiln Dock from the marsh to Hawkins Creek, a tributary of Brickhill River, on their property. The dock is roughly 3.5 miles from the compound. The Candler's usually arrive by boat from Jekyll Island, then drive to their land. "Cumberland Island has other docks managed by the National Park Service, including the public Plum Orchard Dock and Sea Camp Dock," according to the decision. "And while High Point itself owns other docks on Christmas Creek, known as Willow Dock and Cedar Dock, these do not provide deep-water access to the island." A national seashore To establish a national seashore, the National Park Foundation began purchasing land on Cumberland or accepting land as a donation, transfer or exchange. The Secretary of the Interior also authorized retained rights deals that allowed owners to occupy their land for a set period of time or the life of a property owner. The foundation acquired the Carnegie tract with the dock in September 1970 to become part of the new park. The deed allowed "invitees, licensees and assigns, to use the roads, dock and airstrip." Congress made Cumberland Island a national seashore in 1972 and directed that the island be "permanently preserved in its primitive state." Congress also designated a wilderness area, classifying 8,840 acres as wilderness and 11,718 acres as potential wilderness. The old Carnegie dock sits in both designated wilderness and potential wilderness areas. After about a decade of negotiations, the Candler's sold their compound in 1982 to the government, retaining their right to use the property until the "death of the last surviving named shareholder of the corporation, who is currently roughly 35 years old," according to the decision. The Candler's also reserved the right to use the Brick-Kiln Dock, Christmas Creek docks, the airstrip and the roads on the island. The Candler's were given four years to "rebuild and modernize various dwellings located on the compound without interference from the park service, after that time, High Point was prohibited from materially changing the character of any existing improvements or structures, performing new construction or altering the topography of the land without the approval of the park service," the decision reads. "Normal maintenance" and repairs on existing structures were allowed. About the dock By 2008, tidal flows had changed and sediment had settled around the dock, leaving the creek too shallow for passenger boats except for about four hours during high tide

and unusable as a deep-water dock if the siltation continued. In June 2008, the Candlers asked the park service for permission to move the dock about 50 to 100 yards north on Hawkins Creek. “The park service rejected the request, concluding that the deed did not give High Point a right to move or expand the dock and, in absence of such a right, the Wilderness Act prohibited relocating the dock,” according to the decision. “Over the next four years, the parties continued negotiating, with High Point proposing two alternatives — moving the dock 900 feet south and directly on to the Brickhill River or extending the existing dock to the southwest over Hawkins Creek and marshland and directly into the Brickhill River. At one point, the park service suggested that High Point could use the public Plum Orchard dock.” The Candlers hired an environmental consultant to examine different solutions. The consultant said the only feasible options were the three raised by the Candlers and closing the breach between Hawkins Creek and Brickhill River that caused the sediment buildup. “With respect to the Plum Orchard dock, the (consultant’s) report deemed it inconvenient because Plum Orchard’s location would increase the total travel time from Jekyll harbor to the compound to one-and-one-half or two hours, increase the distance the Candler family would have to travel over ‘bumpy roads’ on the island and force the Candler family to compete with members of the public for dock space,” the decision reads. In 2011, the park service agreed to allow the dock to be repaired at its present location because “siltation was a kind of ‘deterioration by the elements.’” Park service officials later said they couldn’t approve closing the breach because it would require construction in the wilderness and while they wouldn’t oppose dredging Hawkins Creek, they would be obligated to comment on the environmental impacts to state officials. The Candlers decided dredging would be too expensive. The Candlers asked the park service to reconsider in February 2012, arguing that the financial and environmental impacts from dredging or using the Plum Orchard dock would be greater than moving or extending the dock and that the U.S. didn’t have the authority to regulate activities on the marsh because the state owns the marshland. “The park service declined to reconsider its decision,” according to the decision. “... (And) also rejected High Point’s contentions that it could not use Plum Orchard as an alternative, noting that the dock is not within a wilderness area and opining that the extended travel time, while not convenient, is not impracticable.” The park service further said that it didn’t matter who owned the marsh because the U.S. has a “statutory obligation and authority” to prohibit dock construction in wilderness areas. In court After High Point LLLP filed suit in May 2012, both parties filed motions for summary judgment. The judge granted the park service’s motion and denied High Point’s in February 2015. “The district court concluded that the deeds unambiguously prohibited High Point from moving or extending the dock without the park service’s permission,” according to the decision. The court also found that precedents set in court and wilderness area restrictions prohibited construction in the wilderness and that the park service can regulate non-federal lands — such as the marsh — within a national park. In their appeal, the Candlers contended that the deed reserves their right to relocate the dock and

the park service is “both authorized and obligated to approve the relocation or extension of the dock.” Rosenbaum writes that the judges “are not persuaded” by the Candlers’ argument and find that they only have a reserved right to use the dock, not move or extend it. In the 1982 deed, the Candlers were prohibited from “changing the character of any existing improvements or structures.” “Given the wilderness-preservation goals Congress had in mind for the Cumberland Island National Seashore, we view the dock’s footprint and location in the natural environment as a rather significant aspect of its ‘basic character,” the decision reads. “... Under the plain language of the deed, nothing allows High Point to relocate or extend the dock. We therefore affirm the district court’s determination that High Point has no reserved right to unilaterally relocate or extend the dock.” The judges also affirmed that the park service did not exceed its authority in denying the request, the Wilderness Act prohibits relocation and the park service has the authority to regulate the marsh. “The park service was properly empowered — and indeed obligated — to deny High Point’s request to do so based on its authority and responsibility to protect the marshlands within Cumberland Island National Seashore as wilderness,” the decision concludes.

## Dock

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