

A Special Legislative Study Committee Approach To The Working Waterfronts and Public Access Issues: The North Carolina Example

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Introduction

In summer 2006, the North Carolina General Assembly established, by state statute, a Waterfront Access Study Committee (WASC) and charged it to "study the loss of diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the public trust waters of the state." In tasking the Committee, the legislature sought the panel's guidance on potential solutions, including "incentive-based techniques and management tools," that would sustain riparian land-use diversity and public access along the North Carolina shoreline.

This presentation by the chair of that Committee highlights (1) public pronouncements, events, and media coverage that prompted Committee formation; (2) the approach utilized by the Committee to frame its work; and (3) the foci of the Committee's final recommendations, as anticipated at the time this paper was submitted in February 2007.

Background

In North Carolina, concern over access to coastal public trust waters and especially the loss of "working waterfronts" has grown steadily over the last decade. Clearly, state's remarkable population growth and ancillary economic and residential development, statewide and in coastal counties, has stoked the issue. One of the fastest growing states, the Tar Heel State has seen a 31% increase in population since 1990. The state's coastal region has hardly been spared from such growth, with several coastal counties listed among the state's fastest growing, such as Brunswick (76% population increase), Currituck (68% increase), Pender (62% increase), Dare (50% increase) and New Hanover (49% increase) counties. As one might expect, such population increases have prompted residential and commercial (e.g., retail, lodging, dining, exclusive recreational services) developments that preferably and consistently seek siting directly on the shore.

Beginning in 2005, several events, actions, and reports called public and legislative attention to the loss of traditional or public access riparian uses along the shore. These included:

- a resolution passed by the N.C. Marine Fisheries Commission;
- a resolution passed by the N.C. Coastal Resources Commission;
- a resolution by an ad hoc assemblage of maritime scholars;
- a conference held in New Bern, N.C. in June 2006, sponsored by N.C. Sea Grant, and entitled "North Carolina's Changing Waterfronts: Coastal Access and Traditional Uses" that attracted nearly 200 individuals;
- dozens of newspaper articles and editorials published in coastal dailies and weeklies;

- a major continuing series on the issue, entitled “The New Waterfront,” in one of the state’s largest daily newspapers (*The News and Observer*, based in the state capital of Raleigh; see <http://www.newsobserver.com/1233/index.html>);
- a state legislative bill to create a study committee on the issue, introduced through the General Assembly’s Joint Legislative Commission on Seafood and Aquaculture (JLCSA).

All of these reports, presentations and pronouncements — as well as anecdotal and word-of-mouth accounts of exemplar closures or sales of waterfront fish houses, marinas, boat repair services, or for-fee fishing piers —and the raising of the working waterfront and loss of access issues by constituents with local and state elected officials, resulted in the passage of a bill that established the Waterfront Access Study Committee on July 27, 2006, and which was signed into law on August 16, 2006.

The Study Committee

The statute (Session Law 2006-248, House Bill 1723) charged the Waterfront Access Study Committee (WASC) to "study the loss of diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the public trust waters of the state." The WASC was specifically tasked to:

- “(1) Gather information about local land-use management and zoning, current shoreline development trends, and local tax rates, including tax assessment trends for shoreline properties.*
- (2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive-based techniques and management tools used to preserve waterfront diversity.*
- (3) Assess the applicability of such tools and techniques to the coastal shorelines of North Carolina.*
- (4) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address issues of diversity of waterfront use and access in North Carolina.*
- (5) Hold three public meetings to present the draft report and recommendations to the public and user groups. One public meeting shall be held in each of ... three coastal regions....”*

The Committee was required to report and solicit public comment at 3 public coastal meetings, and report its final findings to the Joint Legislative Commission on Seafood and Aquaculture by April 15, 2007.

Membership composition of the WASC was either prescribed specifically in the bill, or was the result of appointment authority granted within the bill to the President Pro Tempore of the Senate and the Speaker of the House. It included representation from state and local agencies, state commissions, local governments, an environmental organization, scholars, the building and realty industries, and commercial and recreational fishery trades. By law, the director of North Carolina Sea Grant was appointed WASC chair.

The WASC was to be staffed by Sea Grant, as well as by legal scholars and students associated with the N.C. Coastal Resources Law, Planning and Policy Center (CRLPPC). The General Assembly and the Sea Grant Program entered into a contract to provide the Committee with fiscal support and to ensure smooth operation and conduct of all Committee activities.

Committee Approach and Activities

From the first meeting in late September, and in recognition of the challenging timeline imposed by the legislation, the Committee adopted an ambitious timetable, anchored upon full Committee business sessions to be held approximately every six weeks. Deliberations at these meetings (which were open under public meetings law) were framed, focused, and kept apace by the knowledge that Committee progress reports would need to be made to the JLCS&A and at the three public comments meetings in mid-to-late January.

Business meeting deliberations and activities included:

- (1) presentations by the co-directors and scholars associated with the CRLPPC on potential incentive-based land taxation approaches and planning and management tools;
- (2) presentations by state natural and coastal resource agency officials, typically on existing access-related programs;
- (3) formal and informal presentations by members of the Committee, including one regarding the status and loss of seafood (fish) houses along the coast; and another on a state agency collaboration on public access development;
- (4) in-depth discussions among members on topics presented or raised, including several focused on definitions of key terms, such as “working waterfront” and “public access,” and on potential recommendations to be made to the legislature.

The three public comment meetings were well attended (more than 270 attendees, with 70 making formal statements), received extensive coverage via print and broadcast media outlets, and brought to light extremely strong general support for public recreational access enhancements to public trust waters and for sustaining a diversity of working waterfronts along the shore. There was wide endorsement of all the tools and approaches broached by the Committee as potential recommendations for legislative consideration. Additionally, several new ideas or nuances to Committee thinking were raised that informed the Committee and would likely influence its report.

Concurrent with all meetings, the Committee made heavy use of electronic means (the WWW and e-mail) to present a transparent record of its work to the public and to encourage public input. The WASC website (<http://www.ncseagrant.org/waterfronts>) posted forthcoming meeting notices and past meeting transcripts, formal meeting presentations, several member-to-member e-mail discussions, and documents and reports submitted by Committee members and also from the viewing public for Committee consideration. A steady stream of public input and communications was received via dedicated e-mail addresses, which were also utilized to keep over 300 interested parties informed as to all WASC meetings.

Focus Areas for WASC Recommendations

In January 2007, the WASC began to narrow its focus on areas that could potentially become formal recommendations to the state of North Carolina. These were reflected in “progress report” presentations to the Joint Legislative Commission on Seafood and Aquaculture on January 18, and at the three public meetings held January 30, 31 and February 1. These foci included:

- Increasing state funding of existing public access-related programs, including the state’s boating access infrastructure program, beach and estuarine access program, and water resources development grant program;
- Encouraging the inclusion of public access and working waterfront criteria in the review and selection of projects funded out of existing state development trust funds (Natural Heritage, Clean Water Management, and Parks and Recreation trust funds);
- Creating a “coastal working waterfront and public access trust fund” to fund land acquisitions, the purchase of development rights and other kinds of easements, and facility design/development by government and non-profit entities;
- Encouraging local governments to explore and apply greater use of “conditional zoning” strategies and approaches to sustain or enhance working waterfronts and public access;
- Via new state legislation, expanding existing “present use value” tax relief eligibility to marine working waterfronts (Note: working farms and forests in the state already enjoy such property taxation benefits);
- Via agency rule changes, requiring designated coastal counties to address not only public access needs but also working waterfronts needs in their required state coastal management act land use plans;
- Encouraging state/local government partnerships and approaches that sustain or enhance working waterfronts and public access, including potential establishment of county commissioner-level committees to guide local planning and zoning that addresses working waterfront and public access needs;
- Establishing a state-sponsored and funded educational program series that assists coastal communities in learning and sharing “success stories” and approaches to sustaining/enhancing working waterfronts and public access;
- Funding a comprehensive socioeconomic study of the value and impact of sustaining and expanding working waterfronts and public access;
- Establishing a formal legislative commission to continue the work of the WASC and to monitor implemented recommendations.

Pursuant to input made at the public comment meetings, additional ideas were scheduled for Committee consideration. These included:

- Mandating the frequency of boating access point development along stretches of coastal waterways that are maintained with state funds;
- Mandating the development of public access facilities at trust fund-supported projects;

- Addressing the effects and pros and cons of non-point source/stormwater pollution regulations on future development and expansion of working waterfronts and public access;
- Exploring ways that the state's coastal highway bridges and state right-of-ways might be designed, redesigned, and developed to expand fishing and boating access opportunities;
- Requesting that state resource management agencies and research entities inventory and formally identify their water access and waterfront-dependent property needs, and be provided with fiscal resources to secure such access and properties for management/research purposes in the future;
- Re-examining the state's existing fee structure on private use of submerged lands and public trust waters, as a possible additional source of revenue for state access and working waterfront programs;
- Exploring establishment of a state-supported clearinghouse/service center which could streamline inquiries and permit requests from developers and local governments relating to working waterfront and public access development approaches and projects;
- Addressing ways to maintain the existing network of privately-owned and commercially-operated, open-to-the-public, recreational fishing piers along the N.C. coast, while allowing the state to explore and pilot its entry into development of state-owned and operated recreational fishing piers that also serve a public marine education purpose.

Forthcoming

At the time this paper was submitted (mid-February 2007), the WASC was still two months away from submitting its final report and recommendations to the legislature. All final recommendations, including those distilled from the focus areas covered above, and also new ones generated by the Committee in its final deliberations, will be covered at the Working Waterways & Waterfronts 2007 Symposium, May 9-11, in Norfolk, Virginia. The symposium presentation may also cover early reaction to the Committee's final report by the legislature, the media and general public. Current plans call for the Committee's final report to be available for viewing at <http://www.ncseagrant.org/waterfronts> after April 16, 2007.