

2005-2006 Annual Report of the North Carolina Coastal Resources Law, Planning and Policy Center

The Center's Mission

The North Carolina Coastal Resources Law, Planning and Policy Center (Center) is an inter-institutional entity being planned and developed to coordinate the legal, planning and policy expertise of various units within the University of North Carolina system and apply them to state's pressing coastal and ocean resources and development issues and concerns. The Center will be a research, advisory, and educational entity providing research support to state agencies, state advisory groups and panels, local governments, and community organizations in their efforts to address pressing development and resource issues and to promote the sustainable use of coastal lands, waters, and natural resources. The Center also will engage in the study of long-term coastal use and development trends and issues and communicate the results of this research through white papers available on its website and through the semi-annual publication of *Legal Tides*, a newsletter being sent to over 2,400 state agency and local government personnel and community organizations. Outreach to coastal professionals, community organizations, and others with an interest in coastal resource issues will also take place through Center-sponsored conferences and other programs. The direct costs of the Center's projects will be financed through grants and contracts with state agencies and other entities and funding from North Carolina Sea Grant.

By utilizing graduate and professional school students in various departments and institutions affiliated with the Center as research fellows, the Center will provide additional professional training for these students. In addition, the Center will assist the students in obtaining additional professional training in environmental coastal law, planning and policy through fellowships, internships, and externships and in finding placement with government agencies, law firms, and businesses where such training is of value. A complete statement of the Center's mission is contained in the Center's Governance Document, which is attached as Appendix A.

Establishment of the Center and Its Partners

The Center was agreed to in principle in 2004 by the University of North Carolina School of Law and North Carolina Sea Grant. Joseph J. Kalo, Graham Kenan Professor of Law, and Walter Clark, Sea Grant Law and Policy Specialist and Adjunct Professor of Law were appointed co-directors of the Center to serve during the initial planning, development, and demonstration phases. Professors Kalo's and Clark's resumes are attached as Appendix B. In July 2005, authorization was received from the University of North Carolina Office of the President to plan an inter-institutional Center of the University of North Carolina.

In October 2005, the UNC Department of City and Regional Planning officially joined as a partner of the Center. The UNC Department of Government and the UNC Environmental Program have recently expressed interest in participating in the Center. East Carolina University's graduate program in Coastal Management is also interested in exploring the possibility of its participation and, in August 2006, discussions will be taking place.¹

Mission and Structure of the Center

The mission and the structure of the Center are described in the Center's Governance Document, which is attached as Appendix A. The by-laws of the Center are attached as Appendix C.

The Center's Advisory Planning Board

In early 2006, a fifteen-member Advisory Planning Board was created to help guide the center through the initial planning phase and assist it in its demonstration projects. The names of current Board members are in Appendix D. The Board is a highly diverse group of individuals drawn from the private sector, government agencies, local governments, academic departments, public interest and community organizations and individuals with special interests in coastal resources issues. The first meeting of the Board will take place at the law school in Chapel Hill on August 2, 2006.

Center Pilot / Demonstration Projects – July 1, 2005 to July 1, 2006

During the initial planning stage of the Center, it has undertaken a number of pilot/demonstration projects analyzing state and local coastal development issues and providing legal research and policy research support for state created advisory groups or commission and providing information to the coastal development community. Each of the projects demonstrates the manner in which the center can continue to provide a much needed service to the state and its coastal communities and organizations and advance the education mission of the university system. The response to the Center's projects and other activities has been uniformly supportive and demonstrates that the center will help meet a pressing need within North Carolina. As of July 2006, the Center's ongoing pilot / demonstration projects are:

- Assisting the State of North Carolina Multi-Slip Docking Facility Advisory Committee in the study and development of a Unified Management Policy for North Carolina for all multi-slip docking facilities. The project's proposal is attached as Appendix E. The North Carolina Division of Water Quality has provided funding for this project through the North Carolina Sea Grant program. The Advisory Committee members are representatives of concerned state agencies,

¹ The Coastal Studies Institute initially expressed interest in being a partner in the Center but withdrew after concluding the Center's statewide mission and its research goals were not fully compatible with the Institute's objectives.

such as the NC Division of Marine Fisheries, NC Division of Coastal Management, NC Division of Water Quality, and NC Division of Health Services (shellfish sanitation), the City of Wilmington and the U.S. Army Corps of Engineers. The list of advisory committee members is attached as Appendix F. The goal of the study is recommendations for improvement in the form of a more comprehensive and unified policy and management approach. This project will be completed in Fall 2006. The role of the Center has been to co-ordinate the meetings of the Advisory Committee, conduct the three public meetings required by the grant, to provide the legal and policy research for the committee's discussions, to prepare interim reports, and to prepare the various draft report for the committee's consideration. The final draft report to the committee prepared by the center is attached as Appendix G. The various interim reports have not been included.

- In March 2006, the Coastal Resources Commission requested the Center's assistance on an issue regarding the potential use of a new technology in North Carolina's coastal waters. In response, the Center researched the legal, policy and environmental issues associated with the use of a "jet dock," a floating dock and lift system designed for use in estuarine waters. The report prepared by the center and submitted to the Multi-slip Docking Facility Advisory Committee for consideration and transmission to the Coastal Resources Commission is attached as Appendix H.
- Publication of scholarly articles related to issues of environmental coastal and ocean law, planning and policy. Professor Kalo's article "North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century" appeared in September 2005 issue of the *North Carolina Law Review* (see 83 North Carolina Law Review 1427-1506 or see Appendix I).
- Quarterly publication of *Legal Tides*, a newsletter for lawyers, public officials, and others interested in issues affecting the coastal communities of North Carolina. The newsletter provides discussions of important legal issues surrounding the use of coastal resources and activities on coastal lands and waters. The law school and North Carolina Sea Grant jointly produce the publication. Two issues of *Legal Tides* have been published, both of which are attached in Appendix I. The third issue will be published in August 2006. North Carolina Sea Grant has provided the funding for this project. The publication is sent to approximately 2,400 subscribers. Some receive the publication by email; others receive a hard copy. The high interest and positive response to the published issues demonstrate a meeting of

a significant need for information by public officials and the general public.

- Establishment of a website to make available to the university committee, state and local governments, and the general public, the results of Center research projects. The website address is <http://www.ncseagrant.org>.
- The publication of a white paper, which has been posted on the center's website, discussing issues relating to public access to North Carolina beaches. The paper is entitled "North Carolina Beaches: Beach Nourishment And Public Beach Access" and was published on May 12, 2006. Other white papers are being developed at his time. See Appendix K for more information.
- A recently initiated research project is the investigation of whether any regulatory changes are needed in order for North Carolina to be prepared to assess and guide any potential offshore wind energy projects. This project will become a component of the Ocean Study Pilot Project scheduled to begin in August 2006. Appendix L contains a copy of the preliminary report on wind energy.
- Establishment of two research fellowships for law, planning, or policy graduate students. The students assist the co-directors in researching coastal and ocean law, planning and policy issues relevant to the center's pilot/demonstration projects. The students also may attend meetings of the advisory groups or commission for which the Center is providing legal and policy research.
- Jessica Odom, a recent UNC law school graduate and 2005-2006 Center research fellow, was selected for a 2007 Knauss Sea Grant Fellowship.

Planned Center Demonstration / Pilot Projects: July 1, 2006 – July 1, 2007

- An updated study of ocean and coastal policy and regulatory issues North Carolina is likely to confront during the next decade. The study will be a thorough analysis of North Carolina's existing ocean and coastal policies in light of the evolving and shifting needs and priorities in coastal and ocean management. The report based on this study will make recommendations for any necessary changes. This study will build and expand upon the 1984 Report of the Ocean Policy Committee of the North Carolina Marine Science Council and the 1994 report prepared by North Carolina Sea Grant for the North

Carolina Division of Coastal Management. It is anticipated that the Division of Coastal Management will provide funding for this Center study and report. A copy of the proposal "A Management Strategy for North Carolina's Coastal and Ocean Waters" is attached as Appendix M.

- Waterfront Access Study Committee. State legislation establishing this study and the advisory commission is attached as Appendix N.
- The development of a Southeastern Ocean Policy Conference and Report based on the recommendations of the U.S. Commission on Ocean Policy. This project would be done in cooperation with a number of other entities interested in having such a conference.
- In collaboration with the Coastal States Organization, the NOAA Coastal Services Center and the Rhode Island Sea Grant Legal Program, the Center will conduct a state-by-state analysis of law and regulation related to the ownership, sale and leasing options of state-owned submerged lands.
- Research and assess the potential for water use planning for North Carolina's estuarine waters. The purpose of this study would be to link water use planning with adjacent land use planning to help direct water and land use activities to appropriate areas so as to encourage appropriate resource conservation and economic development.
- The Center will host a program for North Carolina real estate agents.
- Sponsorship of continuing legal and other professional education programs, both in Chapel Hill and in coastal locations for lawyers and other professionals whose practices involve coastal and ocean issues. In Fall 2006, the Center is planning to hold a continuing education program for lawyers and other interested in coastal issues. The program will be held in Wilmington, North Carolina on October 27, 2006. The law school will provide the administrative support and funding for the program.
- Writing a white paper on an important, unresolved issue that arises after significant coastal storms and hurricanes: What is the legal status of oceanfront homes and other structures which, as the result of erosion, are left standing on the beach, in the surf zone, or in ocean waters? This report should be completed in Fall 2006.

Other Potential Future Center Activities

- Development of courses, course materials, externship programs, including a summer coastal externship program for rising second and third year law students and other opportunities to enhance the educational experiences of students interested in a career in which environmental coastal and ocean policy and law is in the planning stage. The Center is in the process of establishing a student externship with a Congressional Committee. The planned externship would allow the student to spend a semester in Washington, D.C., working with a House or Senate Committee with jurisdiction over ocean and coastal issues.
- Providing, where appropriate, research assistance and legal / planning expertise to coastal communities and organizations that are concerned about the impact upon the public interest of growth and development on coastal lands and in coastal and ocean waters.