



Exploring Waterfront Access and Traditional Use Issues in Public Trust Waters

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Welcome to the inaugural issue of *Legal Tides*, a publication from the new North Carolina Coastal Resources Law, Planning and Policy Center.

The center was established in 2004 through a cooperative agreement by the UNC School of Law, North Carolina Sea Grant and the UNC Coastal Studies Institute to provide timely and usable legal and planning information to coastal managers, communities, businesses and citizens. The center serves the citizens of North Carolina by bringing together the research resources of the law school, the research and outreach experience

of the Sea Grant program, and the coastal connection provided by the Coastal Studies Institute to address contemporary coastal issues.

The increasing development pressure on coastal lands and waters raises issues that involve federal, state and local laws, regulations and ordinances. *Legal Tides* will explore legal and planning issues as they relate to North Carolina's coastal area and the Atlantic Ocean. Articles will present a balanced and informative analysis of issues. We also will attempt to keep our readers up-to-date on the latest publications, workshops and conferences that pertain to coastal and ocean law and policy.

Legal Tides is a free publication distributed to interested coastal citizens. Primarily written for a legal and policy audience, we hope to craft the publication to appeal to all readers. Please, let us know what you think.

If you would like to continue to receive *Legal Tides*, contact Walter Clark at wclark@lts.ncsu.edu or (919) 515-1895. Or, write to: *Legal Tides*, North Carolina Sea Grant, Box 8605, N.C. State University, Raleigh N.C. 27695-8605. Also, please let us know if you would prefer receiving *Legal Tides* in electronic format.

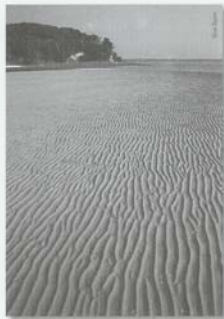
The Rights of Oceanfront Property Owners in the 21st Century

BY JOSEPH KALO AND WALTER CLARK

"Membership has its privileges" — and so does the ownership of waterfront property. With the ownership of waterfront property comes a set of unique property rights. But, unlike other types of property, waterfront property abuts a public resource infused with public-use rights. Consequently, the special rights accorded waterfront property owners must be balanced with such public rights as boating, swimming and fishing.

Identifying these special private rights of use is not always easy and has been the source of controversy since the founding of our nation. Nor is all waterfront property treated the same. The precise nature and scope of the private rights may vary depending on whether the waterfront property is oceanfront, inlet front, soundfront, riverfront or lakefront.

As we search for ways to respond to storms, coastal erosion and increasing demands upon



our already crowded shores, an understanding of the scope and extent of the private and public rights in ocean and inlet shorelines is becoming more important and pressing.

In the next two issues of *Legal Tides*, we will explain the nature and evolution of unique rights possessed by ocean- and inlet-front property owners. These rights, often referred to as littoral rights, have not been explored as thoroughly as riparian rights — a term that is often associated with landowners along rivers and sounds.

In this first issue of *Legal Tides*, Joseph Kalo, Graham Kenan Professor of Law at the University of North Carolina Law School, and Walter Clark, Coastal Communities and Policy Specialist at North Carolina Sea Grant, will begin the journey by explaining the origin and evolution of littoral rights. In the next issue we will examine how "artificial" additions to shorelines impact shoreline ownership and littoral rights.

- What: Collaborative effort between Sea Grant, UNC Law and the UNC Department of City and Regional Planning.
- Goal: Provide coastal communities and local and state policymakers with legal and land use planning information.

What the Center will do:



(1) Examine “incentive-based” tools that will help provide waterfront property owners and businesses continued access to public waters.

Present Use Value Tax
or Deferred Tax



What the Center will do:



- (2) Examine techniques, such as planning and zoning, that could be used to enhance shoreline diversity.

These techniques generally require the political support of local government.

What the Center will do:



(3) Examine techniques that might be used to generate and/or direct funding to purchase waterfront access.

The Goal

A final report including:

- A description of the issue and its magnitude.
- Three “tool kits” that can be used by waterfront property owners, state and local governments.
- Legislative or administrative actions necessary to add new tools.
- Additional research needs.

Our States Waterways

- They are our aquatic highways. Their importance to trade and commerce dates back to the founding of the nation.
- They might also be analogized to a large state park – areas that are owned by the state and open to the public for their use and enjoyment.

Working Definition

- Proposed definition of *waterfront access* in North Carolina.

“Recreational and commercial waterfront access means a parcel or parcels of real property that provide access to *water-dependent* commercial or recreational activities to the public trust waters of North Carolina.”

Definition Continued

- Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a *navigable* body of water. The term includes water-dependent facilities that are open to the public, offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels.

Definition Continued

- *Examples* include: Docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities and other support structures over the water.