

November 21, 2005

Jack Thigpen
North Carolina Sea Grant
NC State University
100-B 1911 Building
Campus Box 8605
Raleigh, NC 27695-8605

Dear Jack,

At the Mid-Atlantic Regional Extension meeting in September, you raised the issue of “Working Waterfront” as a potential Law Center project. As a first step, the Law Center has compiled some information regarding existing legislative initiatives. We hope you will find this information useful. The following is intended as advisory research only and does not constitute legal representation of North Carolina Sea Grant by the Sea Grant Law Center. It represents our interpretation of the relevant laws.

Federal Legislation

On September 19, 2005, Senator Susan M. Collins (ME) introduced Senate Bill 1723, known as the “Working Waterfront Preservation Act of 2005.”¹ S. 1723, co-sponsored by Senators Edward Kennedy (MA) and Olympia Snow (ME), was referred to the Senate Committee on Finance. No major action has been taken on S. 1723 since its introduction.

S. 1723 would amend the Magnuson-Stevens Fishery Conservation and Management Act to establish a fund for the acquisition of waterfront property by state and local governments, nonprofit organizations, and fishing cooperatives to provide access for commercial fishing and aquaculture industries. S. 1723 would appropriate \$50 million in 2005 and 2007 to fund eligible projects, which are projects “to acquire real property or an interest in real property in a Coastal State for the purpose of providing access to persons engaged in the commercial fishing industry or the aquaculture industry to coastal waters in working waterfront areas.” A working waterfront area is defined as “land that is used for or that supports commercial fishing or the aquaculture industry.”

The bill would require grant applications be submitted to state fisheries agencies, who would be responsible for reviewing the value of the commercial fishing and other industries in the community, the needs of these industries, and alternative locations for the project. Applications would be forwarded to the Secretary of Commerce, along with an assessment of need prepared by the agency. Funds awarded under this program could only be used to acquire property from willing sellers and the use of eminent domain would be expressly prohibited. To receive funding, grant recipients would have to enter into an agreement providing the Secretary with assurances that the property would not be converted to an inconsistent use. In addition, S. 1723 would provide a fifty percent tax break to individuals selling their land to grant recipients.

¹ S. 1723, 109th Cong. (2005), available at <http://thomas.loc.gov> .

State Legislation

Maine

In August 2005, the Maine Legislature passed Senate Paper 338 to protect the state's waterfront commercial fishing facilities.² The bill called for a vote on a \$33 million bond issue to fund a variety of projects. Mainers approved the bond issue on November 8, 2005. \$2 million of the \$33 million will fund the Maine Working Waterfront Access Pilot Program. The Program will encourage the purchase of strategically important working waterfronts that are in danger of conversion to other uses. Mainers also voted to give the state the authority to issue \$12 million in bonds to buy property and conservation easements to preserve water access and working waterfront. This \$12 million will be matched by another \$7 million in donations. Mainers also voted to amend the Maine Constitution to authorize the assessment of property taxes for waterfront property used by commercial fishermen based upon the land's current use, rather than its potential for development.³

Several other working waterfront legislative initiatives are currently pending in the Maine Legislature. House Paper 645 proposes the creation of the Working Waterfront Access Program, through which the state would be authorized to issue \$30 million in bonds for farmland assistance and "to help people who fish commercially gain or maintain access to the working waterfront."⁴ A separate bill, House Paper 704, would authorize up to \$3 million in grants for the purchase of working waterfront property.⁵

Florida

In 1996, the Florida Coastal Management Program conducted a study to identify the needs of communities wishing to revitalize their waterfronts.⁶ The study led to the creation of the Waterfronts Florida Partnership Program (WFPP) in 1997, which offers grants and planning assistance for communities seeking to revitalize waterfront areas and promote traditional waterfront trades. The WFPP was codified by the Florida Legislature in 2005 through the Working Waterfront Protection Act.⁷ The Act expanded the scope of the Program to include recreational use of waterfronts and mandated that all future comprehensive land use plans offer incentives and strategies to preserve working waterfronts. The Act defines recreational and commercial working waterfronts as "a parcel or parcels of real property that provide access for water-dependent commercial activities" such as "docks, wharfs, lifts, wet and dry marinas, boat

² S.P. 338 (L.D. 998), 122nd Leg., 2nd Spec. Sess. (Me. 2005), *available at* <http://janus.state.me.us/legis/LawMakerWeb/billtextsearch.asp>.

³ Voters OK waterfront tax breaks, Portland Press Herald, Nov. 9, 2005, *available at* <http://pressherald.maintoday.com/news/state/051109waterfront.shtml>.

⁴ H.P. 645 (L.D. 926), 122nd Leg., 1st Reg. Sess. (Me. 2005), *available at* <http://www.mainelegislature.org/legis/bills/billdocs/LD092601.doc>.

⁵ H.P. 704 (L.D. 1020), 122nd Leg., 1st Reg. Sess. (Me. 2005), *available at* <http://www.mainelegislature.org/legis/bills/billdocs/LD102001.doc>.

⁶ Florida Assessment of Coastal Trends, Florida Coastal Management Program 125 (2004), *at* <http://www.dep.state.fl.us/cmp/publications/FACT2000.pdf>.

⁷ H.B. 955, 2005 Leg., Reg. Sess. (Fla. 2005), *available at* <http://www.myfloridahouse.gov/>.

ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities and other support structures over water.”⁸ The Act also allows county commissioner boards and cities to develop ordinances which defer ad valorem (property) taxes and non-ad valorem assessments for working waterfront property owners. The taxes and assessments may be waived so long as the property is maintained as a working waterfront. If the property ceases to be used as a recreational or commercial working waterfront, the Act requires back payment of all deferred taxes and assessments. This may discourage landowners from selling (and developers from buying) working waterfronts for the construction of condominiums, etc. The Act will enter into force on January 1, 2006.

Other States

Though Florida and Maine are the models for working waterfront preservation, many other states have less publicized or focused programs. New York, for instance, assists shoreline communities with the development of local waterfront revitalization programs, comprehensive use plans to assist in the preservation of working waterfronts and remedy other coastal issues. The New York Waterfront Revitalization of Coastal Areas and Inland Waterways Act⁹ encourages partnerships between shoreline cities and the state government to balance the need for economic development with protection of the Sound’s natural resources.

Conclusion

While only three states have legislation that protects working waterfronts, many other coastal states may protect their working waterfronts through zoning ordinances and revitalization initiatives. Non-governmental organizations may also contribute to working waterfronts preservation through education and outreach campaigns. The Law Center would be happy to continue our research in this area. Please let us know whether you have follow-up questions regarding the above legislation or need additional information about working waterfront initiatives.

Sincerely,

Stephanie Showalter
Director, National Sea Grant Law Center

Jason Savarese,
Research Counsel

⁸ H.B. 955, *at* 13-14.

⁹ N.Y. EXEC. LAW §§ 910 – 923 (Consol. 2005).