

Mississippi-Alabama Sea Grant Legal Program: Providing Legal Research to Support Decision-making



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Mississippi-Alabama Sea Grant Legal Program

Alabama Waterfront Access Study Committee

Meeting

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Legal Program Overview

- In existence since 1972.
- As part of the Mississippi-Alabama Sea Grant Consortium's outreach program, we provide legal research, education, and outreach services to a wide variety of constituents.
- All research is non-biased (non-advocacy) and for informational purposes only.

How Legal Program Could Help

- Provide information on state's water access legal obligations.
- Assist with development of definition of "working waterfront."
- Examine "incentive-based" tools that could help ensure continued access.
- Survey land use controls, such as planning and zoning, that could be used to enhance shoreline diversity.
- Explore techniques that might be used to generate and/or direct funding to purchase waterfront access.

Access Obligations

- Public Trust Doctrine
- Article 1, § 24 of the Alabama Constitution states “That all navigable waters shall remain forever public highways, free to the citizens of the state. . .”



Defining “Working Waterfronts”

- Broad (Fla. Stat. §342.07):
 - “A parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state.”
 - “Recreational and commercial working waterfronts require direct access to or location on, over, or adjacent to a navigable body of water.”

Florida Definitions, Continued

- “Water dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels.”
- “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 are all included in the definition.” (Seaports are excluded from this definition.)

Maine's Definition

- Much narrower than Florida's
 - “A parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominately to provide access to or support the conduct of commercial fishing activities.”



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- Water-dependent uses are "an activity which can only be conducted on, in, over or adjacent to a water of the state because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water."
 - Such uses would include commercial marinas, docking and mooring areas, boat yards, commercial and recreational fishing operations, ship building, ferry landings, seafood unloading, and various support facilities for waterborne commerce and recreation.

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- Water-enhanced uses are "an activity which does not require a location adjacent to waters of the state, but whose location on the waterfront adds to the public use and enjoyment of the water's edge."
 - These water-enhanced uses and businesses include seafood processors, commercial and recreational fishing supply and repair operations."

Taxation Options

- Current Use
 - Fair market value - the price at which the property would change hands between a willing and financially able buyer and a willing seller.
 - Present value - the sale price that particular parcel would command in the marketplace if it were required to remain in the particular category of uses.
- Land Conversion Taxes
- Revenue Limiting Caps
- Revenue Generation Fees
- Homestead Exemptions



“Incentive-Based” Tools

- Purchase of Development Rights and Transferable Development Rights
 - Voluntary, market-based approaches allow real property owners to receive monetary compensation in exchange for development rights.



Potential Land Use Controls

- Traditional Zoning
- Conditional Zoning
 - Property owner agrees to limit the use of his property to a particular water-dependent use or to subject his tract to certain restrictions as a pre-condition to any rezoning.
- Historic district designation

Possible Funding Mechanisms

- Funding to acquire property or secure waterfront access easements can come from five sources:
 - Direct budget allocations
 - Trust funds & direct grant programs
 - Bond issues
 - Nonprofit or private partnerships
 - Various fee-based local revenue streams

Proposed Coordination between Legal Program and WASC

- The Committee may submit specific research requests to the Legal Program at anytime through LaDon, Jody, or directly via email to sshowalt@olemiss.edu.
 - One Committee member should be designated as the contact person for the Legal Program to avoid overlapping requests.
- The Legal Program generally fulfills research requests within 2-4 weeks, depending on the complexity of the request.
 - The Legal Program can present research findings in writing and/or in person at upcoming Committee meetings.

Contact Information

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