

FROM LAND TO WATER

The Waterfront Property Owner's Right of Access to Navigable Water

Living on North Carolina's coastal rivers and sounds can offer many amenities — a pleasant view, a fresh seafood dinner caught from the pier, a boat docked for easy access to the water or a swim on a hot summer afternoon.

Most of these amenities are thought of as rights inherent in owning a piece of waterfront property — a belief that is almost always reflected in the high price of land bordering the water.

But which of these waterfront amenities are legally protected rights?

This question is taking on new significance as competition heightens for waterfront property and for the use of adjacent public waters and submerged lands.

Waterfront property owners do, in fact, have legally protected rights. These rights, called riparian rights, are considered part of an owner's estate in the land and are treated as property rights. Yet they must coexist with rights held by other waterfront property owners, rights held by the public (often called public trust rights) and rules designed to protect the environment. This publication discusses the riparian right of access to navigable water.

As North Carolina's shorelines and waterways become more crowded, regulators must weigh riparian rights against the rights of others. A clear understanding of riparian rights and the forces that limit them can help waterfront owners plan while enjoying the advantages offered by the waters at their shoreline.

What is Riparian Land?

Riparian refers to land that borders a watercourse. It can be land along a sound or river. But to be riparian, the land must touch the water. Proximity

to the water is not enough. For example, property separated from the water by a public road is not riparian. The owner of land that borders a watercourse, however, is a riparian owner.

But who owns the waters and the submerged lands adjacent to the riparian property?

The Public Trust

The water in North Carolina's sounds and navigable rivers and streams belongs to the public. It is held by the state "in trust" for the public's use and enjoyment. These public use rights are often referred to as public trust rights, and they can act as limitations on the exercise of riparian rights.

All submerged land under **tidal** waters is also held by the state in trust for the public.* Private ownership of upland property ends at the mean high tideline. The state may not convey ownership of these submerged lands even to riparian owners. However, the state can and does allow riparian owners the limited use of adjacent submerged lands.

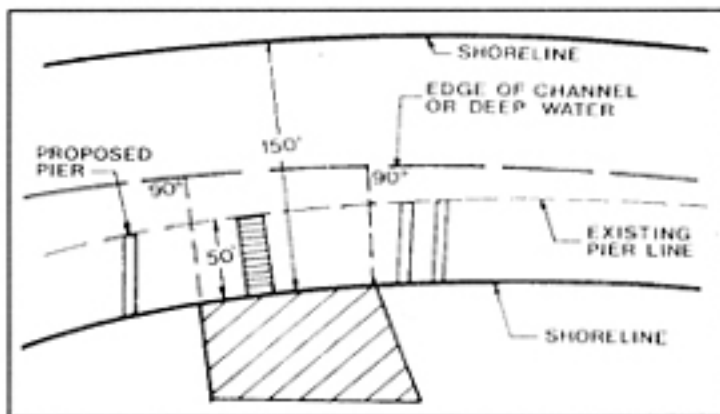
Submerged land under **nontidal** waters (for example, navigable freshwater rivers) is generally held by the adjacent shoreline owner. Ownership extends to the center of the river or stream. Even though private ownership of submerged land exists in these situations, the public maintains public trust use rights to the overlying navigable waters.

* The only exceptions are grants made in the 1920s and '30s by the state Board of Education to areas of estuarine marshlands that are regularly flooded by tides. Though the state has recognized private ownership of lands below tidal waters in these situations, the land remains subject to all public trust rights.

Engineers has established official pier-head lines along some shorelines. In a few areas, these lines are established by local governments in consultation with the Corps of Engineers. Piers cannot extend beyond these lines either as part of a marina complex or as individual structures.

In areas where the Corps of Engineers has not established lines, the state prohibits piers from extending more than one-third of the width of a natural water body or man-made canal or basin. Measurements to determine widths of channels, canals or basins are made from the mean high tide line or from the waterward edge of any coastal wetland that borders on the water body.

State regulations also forbid construction of a pier beyond an established pier line — the point over the water where neighboring piers end.



Restrictions to Safeguard the Environment

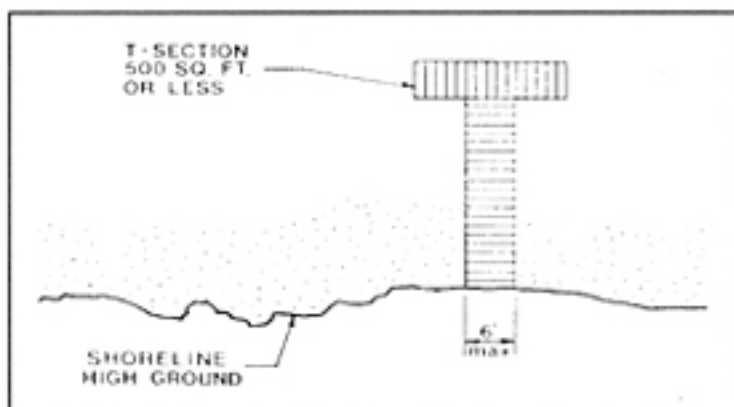
Riparian owners, in accessing deep water, must adhere to several regulatory safeguards to protect fragile wetlands and shallow water systems.

For example, to protect coastal wetlands, a pier built over marsh may not be more than 6 feet wide. By limiting the width, the adverse effects of shading on coastal wetlands are precluded. Platforms or "T" sections, built at the waterward end of piers, may be wider than 6 feet, but their total area may not be more than 500 square feet.

Navigation channels, canals and boat basins may not be placed in primary nursery areas. These are areas where early development of finfish and crustaceans occurs. Nursery areas are designated by the N.C. Marine Fisheries Commission and are generally located in the uppermost reaches of coastal rivers and sounds.

Navigation channels, canals and boat basins must also avoid highly productive shellfish beds, submerged vegetation and significant areas of coastal wetlands. Only narrow fringes of coastal

wetlands may be excavated for access purposes and then only if it is determined that the excavation will have no significantly adverse impact on fishery resources, water quality or adjacent wetlands. There must also be no reasonable alternative that would avoid the wetland loss.



Marinas must be located to avoid wetland areas. And they may not disturb submerged aquatic vegetation beds except for dredging needed to reach marinas that have been excavated from upland areas. Marinas that require dredging cannot be located in primary nursery areas. In those coastal waters designated as Outstanding Resource Waters (ORWs), special restrictions apply to marina development. In some ORWs, new marina development may be prohibited. In other areas, it may be highly regulated.

Restrictions to Protect Private Shellfish Leases

To protect shellfish leaseholders, state regulations require any riparian owner constructing a dock or pier to notify the leaseholder if any part of the structure will overlap the lease. Docks or piers that are found to interfere significantly with shellfish leases may not be allowed or may be required to be redesigned.

State regulations require that all new shellfish leases be located at least 100 feet from a developed shoreline. The only exception is when the shoreline owner grants the lessee written permission to locate at a closer point. This set-off requirement is designed to prevent leases from infringing on the rights of adjacent riparian owners.

Conclusion

As waterfront development continues, riparian property owners will find it increasingly important to know and understand their riparian rights — particularly the right of access to navigable water.

A riparian property owner has the power to

The Riparian Right of Access

In North Carolina, a riparian owner has the right of access to deep water. Access to the water may be gained from a pier, wharf, channel or a boat or line cast from the shore.

However, this right is tempered by environmental and other public safeguards. Many safeguards are designed to protect the fragile environments of coastal wetlands and shallow water areas — areas that riparian owners must often cross to reach the navigable water.

Other safeguards are designed to protect the deep-water access rights of adjacent riparian owners, the public's right to navigation and recreation and the right of fishermen to make reasonable use of the state's public waters.

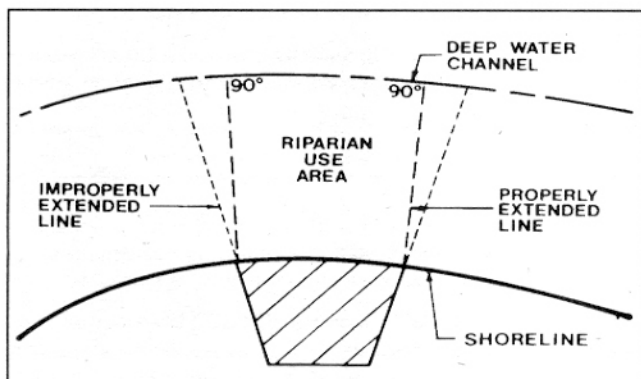
Below are the rules a riparian owner must follow in exercising the right of access to navigable water.

Protecting the Access Rights of Other Riparian Owners

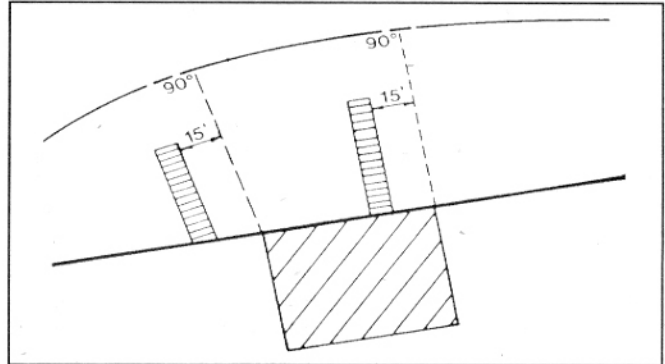
Methods have been developed for defining which areas riparian owners can use for offshore access-related construction. These safeguards are designed to prevent piers and similar structures from being built in such a way that they unreasonably interfere with the access rights of others.

North Carolina law limits riparian owners' offshore buildable area to the front of the riparian property. The front of the tract, or the riparian use area, is determined by drawing a line along the channel at deep water in front of the property. Then lines are drawn perpendicular to the channel line so that they intersect with the shore at the point where the upland property lines meet the water's edge.

Riparian owners often mistakenly extend their property boundaries in a straight line from upland lines.



Once the boundaries of the riparian area have been determined, regulations also require that offshore structures be set at least 15 feet from the property lines as they extend to deep water. A pier or similar structure may be placed closer than 15 feet to an adjoining property line only when the adjacent owner gives written consent or neighbors are jointly constructing a pier.



Protecting the Public's Right to Use Public Trust Waters and Lands

In the exercise of the riparian right to access, marinas, piers and other access-related structures must be designed to minimize obstructions to navigation and other public uses of the waterways.

To minimize the use of public trust areas, the N.C. Coastal Resources Commission (CRC) has developed criteria for rating sites for the construction of marinas. Preferred locations are in basins excavated from upland areas rather than in public waters.

When marinas must be built in open water, regulatory standards limit the amount of public water that can be occupied by marinas associated with residential developments. These types of marinas are allowed no more than 27 square feet of public trust water for every 1 linear foot of shoreline for the construction of docks and mooring facilities. The 27-square-foot allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces. To minimize the occupation of public trust waters by docks and moored vessels, dry storage marinas should be used when possible.

The CRC defines marinas as any publicly or privately owned dock, basin or wet boat storage facility built to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haul-out facilities or repair services.

To protect navigation, the U.S. Army Corps of

prohibit unreasonable interference with these rights. Conversely, a riparian owner may not make an unreasonable use of the water that interferes with legal rights held by others.

—Walter Clark, Coastal Law Specialist

Appendix

The riparian owner should be aware that construction of access-related structures along the coastal waterfront will likely require a permit.

For information on permit requirements, contact the Division of Coastal Management, N.C. Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687. Phone: 919/733-2293. Or contact one of the division's field offices at the following four locations:

- (1) Division of Coastal Management
1367 U.S. 17 South
Elizabeth City, NC 27909
919/264-3901
- (2) Division of Coastal Management
P.O. Box 2188, 1424 Carolina Avenue
Washington, NC 27889
919/946-6481
- (3) Division of Coastal Management
P.O. Box 769, 3411 Arendell Street
Morehead City, NC 28557
919/726-7021

- (4) Division of Coastal Management
127 Cardinal Drive Extension
Wilmington, NC 28405
919/395-3900

For information about primary nursery areas or shellfish bed leasing, contact the Division of Marine Fisheries, N.C. Department of Environment, Health and Natural Resources, P.O. Box 769, Morehead City, NC 28557-0769. Phone: 919/726-7021.

For information about Outstanding Resource Waters, contact the Division of Environmental Management, Water Quality Section, N.C. Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, NC 27626-80535. Phone: 919/733-5083.

And write or call the U.S. Army Corps of Engineers for information on pier alignment along federally maintained channels. U.S. Army Corps of Engineers, Regulatory Functions Branch, P.O. Box 1890, Wilmington, NC 28402-1890. Phone: 919/251-4511.



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