

EASEMENT REQUIRED FOR IMPROVEMENTS IN PUBLIC TRUST WATERS

Historically, owners of real property adjoining public waters have owned riparian rights. Since the inception of the English common law, the owners of riparian rights have been entitled to access deep water from the shoreline. In recent years, however, a greater emphasis has been placed on the rights of the public in public trust waters. As a result of North Carolina court decisions in 1993, it is now a requirement, notwithstanding the existence of a CAMA permit, for anyone desiring to construct improvements in public trust waters to receive an easement from the State of North Carolina, and to pay fair market value compensation for that easement, at least as to any improvements that are determined to have a substantial impact on the public trust waters.

The State of North Carolina, operating through the Department of Administration, is now attempting to implement an interim easement program, where all public trust users other than single family dock owners desiring to construct improvements will be required to pay .10 per square foot per year (with cost of living increases) for that privilege. This program is running into resistance, both from professional environmental organizations advocating a much more expensive program, that would also have a regulatory component and would include single family docks, as well as from some opponents of an easement program. Therefore currently no easements are being issued.

It is likely that the legislature in 1995 will begin consideration of this issue, with the possibility of legislation being enacted whether in 1995 or 1996. The proposals have ranged from \$105 per square foot to \$25 per square foot, and coverage has been proposed for all improvements on the one extreme, to few improvements on the other. It is a virtual certainty, however, that once a program is enacted, it will, either immediately or by phase in, be made applicable to existing facilities.

There are a number of complex policy issues relating to any implemented program. Individuals or groups with particular opinions may wish to send a note to your governor or other elected representatives. Governor Hunt has publicly indicated strong support for an aggressive program.

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