



# Water-Dependency Definitions and the Law: New Needs for Old Definitions

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## Outline

- The Report—Responding to Law in Florida
- Florida and National Context
- Defining “Water-dependent Use”

## The Report

- Water-Dependent Use Definitions: A Tool to Protect and Preserve Recreational and Commercial Working Waterfronts
- Available at [www.law.ufl.edu/conservation/waterways/waterfronts/access.shtml](http://www.law.ufl.edu/conservation/waterways/waterfronts/access.shtml)
- Additional waterways/waterfronts info at <http://www.law.ufl.edu/conservation/waterways/>

## Florida Context: 2004

- Fla. Senate report on waterfronts
  - Conversion
  - Loss of public access
  - Loss of infrastructure supporting boating

# Statutory Planning Requirement

- Coastal counties must include regulatory incentives and criteria that encourage the preservation of **recreational and commercial working waterfronts** in the future land use element.
- All coastal local governments must include strategies that will be used to preserve the **recreational and commercial working waterfronts** in the shoreline use component of the coastal management element.



## Recreational and Working Waterfronts Definition

. . . . means 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 a location on, over, or adjacent to a navigable body of water. **The term includes 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.** These facilities 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.

## Florida Context: 2005

- “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.”

Florida Statute §342.07

## Florida Context: 2005

- “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.”

Florida Statute §342.07

## Florida Context: 2006

- (2) . . . “recreational and commercial working waterfront” means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. 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 and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, 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.



## Florida Context: 2006

- Tax deferral program to address property issues
  - May be developed at option of local county
- Survey by UF Conservation Clinic: targeted waterfront users unlikely to use tax deferral option

# H.R. 2548: Keep America's Waterfronts Working Act of 2009

- The term ‘working waterfront’ means real property (including support structures over water and other facilities) that provides access to coastal waters to persons engaged in commercial fishing, recreational fishing business, boatbuilding, aquaculture, or other water-dependent coastal-related business and is used for, or that supports, commercial fishing, recreational fishing, boatbuilding, aquaculture, or other water-dependent coastal-related business.

## H.R. 2548

- Sec. 320. (a) Findings and Purpose: . . . .

. . . .

‘(B) Water-dependent commercial activities depend on coastal access in the form of docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling, repair, and construction facilities, commercial fishing facilities, and other support structures on, over, or adjacent to navigable bodies of water.

. . . .

‘(2) The purpose of this section is to preserve, protect, and expand coastal access for persons engaged in water-dependent commercial activities including commercial fishing, recreational fishing, aquaculture, boatbuilding, or other water-dependent coastal-related businesses.

# Survey of Definitions

- Federal
  - CWA and RHA §10 regulations
  - “Where the activity associated with a discharge which is proposed for a special aquatic site does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not "water dependent") ”

# Survey of Definitions

- Federal: CZMA
  - 16 U.S.C. 1452(2)(D) describes Congress' finding and declaration that “coastal-dependent” uses should be given priority in the development and management of the coastal zone by states
  - 16 U.S.C. § 1452(2)(E) says the same for public access for recreation purposes

## Survey of Definitions: NY

- “Water-dependent uses” can only be conducted on, in, over, or adjacent to the water; each involves, as an integral part of the use, direct access to and use of the water, and
- “Water-enhanced uses” do not require waterfront location to function, but are often essential to efficient functioning of water-dependent uses and can be essential to their economic activity. Water-enhanced uses increase the public’s enjoyment of the waterfront.

## Survey of Definitions: NJ

- "*Water dependent*" means development that cannot physically function without direct access to water
- Specifies exclusions (housing, hotels, motels, restaurants, and others)
- "Water-oriented development"
  - serves the general public and derives economic benefit from direct access to the water body along which it is proposed

# Survey of Definitions: Connecticut

- . . . .uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland
  - Includes list of examples

## Drafting a Useful Definition

- Begin with a community vision
- Use “Statements of Purpose”
  - Interpretive tool for Florida ordinances
- Keep “water-dependent uses” defined narrowly
  - Allow other uses through additional categories

# Three Potential Elements

- Water-Dependent Uses
- Water-Related Uses
- Water-Enhanced Uses

## Water-Dependent Use

- An activity that must physically be located in, on, over, or adjacent to water in order to conduct its primary purpose and which, therefore, cannot be located inland.

## Water-Related Use

- An activity not dependent on direct access to water in order to conduct its primary purpose, but which provides goods or services directly related to water-dependent uses.

## Water-Enhanced Use

- An activity that benefits economically from being located on or near the water but that is neither dependent on direct access to water nor provides goods or services directly related to water-dependent uses. Water-enhanced uses are specifically excluded from definitions of both water-dependent and water-related uses.

## Definitions Used in Context

- Incorporate into geographic overlays designed to promote the specific community vision
- Allow water-dependent, water-related, and water-enhanced based on vision

## Conclusion

- “Water-dependent use” used in varying contexts in many regulatory schemes
- “Water-dependent use” can be very flexible to accommodate local concerns
- Complexity involved similar to that for other land-use definitions and recommendations
- Key is in good drafting
  - Examples, especially for questionable cases
  - “Purpose statements” to help in interpretation



# QUESTIONS?

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## Florida Context: 2008, Const. Amend.

- (j)(1) The assessment of the following **working waterfront properties** shall be based upon the current use of the property:
- a. Land used predominantly for commercial fishing purposes.
  - b. Land that is accessible to the public and used for vessel launches into waters that are navigable.
  - c. Marinas and drystacks that are open to the public.
  - d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

## Florida Context: 2005

- “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.**”