

MINUTES

PUBLIC RECREATION ACCESS TASK FORCE

December 4, 2018

A public meeting of the Public Recreation Access Task Force was held on Tuesday, December 4, 2018 beginning at 9:30 a.m. in House Committee Room 5, Ground Floor, Louisiana Capitol, Baton Rouge, Louisiana.

I. CALL TO ORDER

Mr. Blake Canfield called the meeting to order at 9:35 a.m.

II. ROLL CALL

Mr. Canfield then called the roll for purposes of establishing a quorum. The following members of the task force were recorded as present:

Sen. Bret Allain

Rep. Blake Miguez (*alternate for Rep. Beryl Amedee*)

Mr. Mike Bengé

Mr. Jim Wilkins (*alternate for Mr. Rex Caffey*)

Mr. Blake Canfield

Mr. Daryl Carpenter

Sen. Rick Ward (*alternate for Sen. Norby Chabert, arrived at 9:46 a.m.*)

Mr. David Cresson

Mr. Taylor Darden

Mr. Cole Garrett

Mr. Joseph LeBlanc

Mr. John Lovett

Mr. Charlie Marshall

Mr. David Peterson

Mr. Lucas Ragusa (*arrived at 9:38 a.m.*)

Mr. Sean Robbins

Mr. Jonathan Robillard

Mr. Jay Schexnayder

Mr. Tony Simmons

Mr. Harry Vorhoff

The following members of the task force were reported as absent:

Ms. Cynthia Duet

Rep. Jack McFarland

Mr. Jeff Schneider

Mr. Canfield announced that twenty (20) members of the task force were present and that a quorum was established.

III. APPROVAL OF MINUTES

A motion by **Mr. Mike Bengé** to approve the minutes for the October 29, 2018 task force meeting was approved unanimously.

IV. PRESENTATIONS AND DISCUSSION ITEMS

a. Presentation by Chris Macaluso, Theodore Roosevelt Conservation Partnership: Mr. Macaluso presented written remarks attached hereto as Attachment A.

i. **Sen. Allain** asked what Mr. Macaluso believed would be a reasonable compromise on the issue of public recreation access. Mr. Macaluso stated he believed giving landowners the opportunity to be held harmless for people who come onto their property, the creation of potential easements to allow ingress and egress onto property for recreational purposes. Mr. Macaluso stated he believed those were good places to start. Also, he added, it is virtually impossible in some places to know whether waterways are public or private and many persons who may come onto private property have no intent to trespass. In light of that, Mr. Macaluso stated there should be the potential for some reasonable compromises.

b. Presentation by Tony Simmons, McIlhenny Company: Mr. Simmons presented written remarks along with a report titled *Review of boat wake wave impacts on shoreline erosion and potential solutions for the Chesapeake Bay*, STAC Review Report, Fall 2016, STAC Publication 17-002, attached hereto together as Attachment B.

i. **Sen. Allain** stated he could personally attest to the amount of time and money Mr. Simmons and his family have spent protecting the environment and ecology on their property and stated that the McIlhenny property was in better shape than most of the public waterways and property surrounding it. Sen. Allain suggested that the McIlhenny property could be a case study on how to best manage property for coastal resource, wildlife, fisheries, and ecological protection. Sen Allain stated he did not believe it was the intent of the task force to impede coastal restoration efforts or to give access to sensitive areas. He stated that he feels there is some low hanging fruit that the task force can work on. Sen. Allain thanked Mr. Simmons for participating on the task force and for all of the work he and his family have done for the environment and ecosystem. Sen. Allain asked Mr. Simmons what potential compromises he felt were reasonable. **Mr. Simmons** stated he believed the problems in the eastern part of Louisiana were different than the problems in the western part of the

state. For instance, he stated, the subsidence in the western part of the state does not appear to be anywhere near as significant as that experienced in the eastern part. Mr. Simmons stated that determining whether and when emergent private property becomes a submerged public water bottom is much more complicated in the eastern part of the state than in the western part of the state. He stated that he thinks the main issue to resolve in order to solve these issues appears to be mineral rights and if the Legislature can find some sort of way to accommodate that with landowners who have submerging wetlands that would be an area of compromise. Perhaps a resolution of mineral rights in exchange for an easement of some sort for public access would be one way to reasonably accomplish this. Mr. Simmons stated that he struggles with the idea of allowing public access onto private canals, noting that he is only able to manage the McIlhenny property because of the limited points of access into it, which would change dramatically if there were open public access into private canals.

c. Discussion of information requested at October 29, 2018 meeting:

- i. **Mr. Canfield** discussed the request at previous meetings to have someone present on use valuation for property tax purposes. Mr. Canfield stated he reached out to the Louisiana Tax Commission, the Louisiana Tax Assessor's Association, and the Lafourche Parish Tax Assessor's office about presenting to the task force on the topic. None of the groups volunteered to present. Mr. Canfield stated that the Tax Commission adopted rules setting forth how use valuation is to be calculated for property tax assessment and that he forwarded these rules to the Task Force. It is the Parish Tax Assessors who determine the valuation for individual property. Mr. Canfield reported that speaking with staff of the Lafourche Parish Tax Assessor's Office, he was informed that they look to the original property plats to determine who owns the property and that they look to the private landowner to pay taxes on that property even if it is under water. The assessor's office does not make a change as to property ownership for tax payment purposes unless a court determines a change of ownership or the parties acknowledge such a change in ownership. Further there is an application process for being taxed on a use valuation basis and there are different valuations for agriculture, timber, and marsh. The rules adopted by the Tax Commission provide the guidelines to be used by the tax assessors when determining use valuation for property taxes. Mr. Canfield mentioned that Lafourche Parish has an online GIS map layer showing property ownership for purposes of property taxes and he stated he would forward the link to the Task Force. **Mr. Marshall** asked what the relevance of property tax assessment was for purposes of the Task Force's directive. **Mr. Carpenter** stated he made the request and

wanted more detail on how the marsh use valuation was made. Mr. Carpenter stated you have private landowners blocking off access and claiming the public waters, fish, crabs, etc. as off limits to the public. He wanted to know how this was accounted for, stating that discussions he has had with crabbers regarding their crab leases with private landowners leads him to understand that these crabbers have to take their crabs to a specific wholesale purchaser to have their catches weighed and to sold. That wholesaler then provides copies of receipts for these sales to the private landowner for them to determine the value of the use for property tax valuation purposes. Mr. Carpenter was curious where and how the oversight of this valuation occurred. If these public resources are off limits to anyone who does not enter into a private lease, Mr. Carpenter stated he wants to make sure they are being adequately accounted for, capitalized on and being claimed as a private thing. **Mr. Peterson** stated he believed another issue the task force wanted to look at was that if you have private property that is later submerged and that property might be dual claimed by the state, but private landowners are still required to pay taxes on them, how that is being handled by the assessors. Mr. Canfield stated he would try to get some additional information on these issues.

- ii. **Mr. Canfield** stated that he looked into having a representative of the U.S. Coast Guard present to the task force on requirements for lighting and marking structures on water. Mr. Canfield stated he forwarded the regulations on those requirements to the task force and that he has a request into the USCG's Dist. 8 in New Orleans to make a presentation and had not heard back yet.
- iii. **Mr. Canfield** stated he reached out to both Louisiana Economic Development and to the Lt. Governor's Office regarding economic impact of recreational hunting, fishing, and public water use, as well as some of the big fishing tournaments. LED suggested Mr. Canfield reach out to the Greater New Orleans Sports Foundation regarding detailed economic impact information associated with the most recent B.A.S.S. Masters Classic.
- iv. **Mr. Canfield** stated that regarding the request to have a presentation on mapping, The State Land Office has offered to give a presentation to the Task Force at an upcoming meeting if that is of interest.
- v. **Sen. Allain** stated that we need to have a further discussion of the mineral rights and ownership. He asked why a private landowner can't negotiate with the State the mineral ownership or some reasonable solution possibly in exchange for access prior to filing suit for ownership determination. Sen. Allain suggested that this issue be discussed at the next meeting of the task force; at least to consider what such a solution might look like if we were to go down that path. **Mr.**

Darden stated you have to look at the constitutional issues involved. His understanding is that the State's position is that they are prohibited from alienating State owned water bottoms and associated mineral rights. Sen. Allain, stated that if part of the solution is amendment of the constitution then we should consider that. Mr. Darden, agreed but stated we also need to look at unfettered access as making the problem of coastal erosion worse. Sen. Allain stated he recognized we need to prevent access around sensitive areas. Mr. Darden stated we agree on that but one of the obstacles he sees is how do we monitor that and how do we enforce such a resolution. Mr. Darden also questioned how it was possible to determine damage caused by unfettered public access and the fact that such access can lead to more open water and erosion. Sen. Allain stated he does not believe we would be discussing public access everywhere and maybe we need to consider a permitting process for those areas that need to be blocked off. Mr. Darden stated he thinks such a process already exists in the form of private leases. **Mr. Canfield** stated he would look into it with other State entities as it concerns the State's mineral interests for a possible presentation in the future. **Mr. Robbins** asked can we research options to deal with mineral rights and take that off the table. Mr. Canfield stated that the parties just mentioned can definitely discuss this as it concerns the State's mineral ownership and that he did not believe anyone has suggested that members of the public can acquire mineral ownership merely through recreational use. Mr. Canfield stated he needs to think more about who can address the issues of liability and damage associated with public access.

- vi. **Mr. Peterson** suggested that we have someone come present on the economic side of private leases for hunting, fishing, trapping, etc. In order to understand the economic impacts associated with public access we need to consider the economic impacts of private leasing for these types of uses. Just so the task force is balanced in its consideration. **Mr. Canfield** asked the task force to consider who would be a good person to present on this.
- vii. **Mr. Bengé** requested a breakdown of where the money to fund CPRA projects comes from. He mentioned that several people stated that public tax dollars are being spent on private property, but how much of the funding comes from permit fees paid by private parties to work on their own property or from mineral revenue from offshore. Mr. Bengé also requested that Dept. of Wildlife and Fisheries come in to discuss how they manage wildlife management areas and preserves and why they restrict access to these properties. **Mr. Canfield** stated he would meet with Mr. Garrett to discuss.
- viii. **Sen. Allain** suggested that we either have the Sheriffs or District Attorneys come present to the task force regarding trespass laws, as

some changes might be required. Mr. Canfield agreed to look into it. **Mr. Carpenter** stated that the problem we might have is that each Sheriff handles it differently and so it may not be possible to get a uniform understanding. You might get a recital of La. R.S. 14:63. Sen. Allain stated that there needs to be uniformity.

d. Discussion of Next Task Force Meeting – Scheduling and Agenda Items:

- i. **Mr. Canfield** stated that for the next meeting he is looking at February and requested that the Legislative members be thinking of when the meeting after that should be held in light of their legislative schedules.
- ii. **Mr. Canfield** mentioned that for upcoming meetings David Peterson mentioned presenting on property acquisition and management issues for CPRA. Further he stated that a presentation on Sea Grant's report will be upcoming. Mr. Canfield mentioned that a few of the task force members are planning to coordinate a discussion on the previously mentioned *Phillips* case at an upcoming meeting. Finally, Mr. Canfield stated that Professor Lovett has mentioned presenting on how other jurisdictions handle public access issues at an upcoming meeting.
- iii. **Mr. LeBlanc** questioned the magnitude of boat wake causing erosion and requested someone present on this impact. **Mr. Canfield** mentioned the study provided by Mr. Simmons. **Mr. Simmons** stated he provided an electronic copy of the report on a study of the impact on wetlands in the Chesapeake caused by boat recreation. Mr. LeBlanc stated that without the oil and gas canals dredged on private property you would not have had as much erosion and now the public is being chastised for using the waterways where all the fish are. The fish are following the coast as it erodes. These fishermen just want to fish. The private landowners reaped the benefits of the oil and gas activity and now want to also reap the benefit of coastal restoration. Mr. LeBlanc stated that we need someone to define what navigable waters are and where a person can't go. Mr. Canfield stated his understanding is that the navigability test is whether a waterway was navigable and susceptible to commerce in 1812. **Mr. Vorhoff** agreed, but further stated if private property eroded into a navigable waterway then it too became part of that navigable waterway. Mr. Canfield stated that this was further complicated by the fact that if private property was dredged with private money then that became a privately owned water bottom and subject to being blocked off from public access. Then on top of all of this, he continued, you have to consider that the law states "naturally navigable", which can further confuse things. Mr. Vorhoff stated you also have disagreements over what is considered susceptible to commerce. Courts have been all over the map on that question, he said. Mr. Canfield stated he would try to think of aspects of navigability that have not previously been presented on and he asked that the task force

still look for other studies or reports similar to what Mr. Simmons provided on the issue of impacts caused by recreational waterway access.

- iv. **Mr. Robbins** asked whether there was a definition in law of navigability and suggested that we consider defining navigability. **Mr. Wilkins** suggested that State Lands be involved in that discussion as they are the ones who make that determination for the State. **Mr. Darden** stated that we have a definition of navigability, but it's a question of how it is applied. He stated we can look into it but I don't know that it will help since we agree as to the definition, there are just issues of how to apply it. **Mr. Canfield** suggested a presentation into how the definition of navigation is applied.

V. PUBLIC COMMENTS

There were no public comments

VI. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE THE TASK FORCE

No other matters were brought before the task force.

VII. ADJOURNMENT

Mr. Darden moved that the task force adjourn its meeting. This motion was approved unanimously and the meeting adjourned at 10:48 a.m.