

RELEVANT STATE LEGISLATION AND LEGAL TENETS

It is important to understand several pieces of legislation enacted over the years by the North Carolina General Assembly (NCGA). Included are the following:

Public Ownership of Water Bodies and Regulatory Authority of State Agencies

Water Bodies

In 1827-28, legislation was passed by the NCGA that expressly forbids the lands covered by waters of any lake within North Carolina from being recorded for private ownership.

Attachment 2.

In 1911, additional legislation was enacted specifically aimed at White Lake. Entitled “AN ACT TO SECURE TO THE PEOPLE OF THE STATE OF NORTH CAROLINA THE USE OF THE LAKES OF BLADEN, COLUMBUS AND CUMBERLAND COUNTIES”.

Attachment 3. The Act specifically named White Lake, Singletary Lake, Black (Bay Tree) Lake, and any other lake in these 3 counties “...shall never be sold or conveyed to any person, firm, or corporation, but shall always be and remain the property of the State of North Carolina for the use and benefit of all people of the State”. This legislation made White Lake a public trust.

Clarification concerning the status of “state lakes” was made in 1929 when legislation reduced the threshold of acres from 500 to 50 and the specification that “all lakes now belonging to the State...should be administered as provided for other recreational areas owned by the State.” (Chapter 165 of the Session Laws of 1929). **Attachment 4.** This statement allowed the then Department of Conservation and Development to assume management authority over the seven Coastal Plain lakes, or North Carolina’s natural ‘bay lakes’. All of these lakes, except White Lake, have adjoining park land. *The importance of not having adjoining park land will become apparent in later discussions of lake issues.*

Operation and Management of State Parks

A number of other laws and regulations related to the operation and management of state parks have been codified over the years including the following.

- GS 146-13 states that a permit is required to erect any dock, pier, pavilion, boathouse, or other structure upon the floor of, or upon, the waters of a state

lake and that the permitting agency is the Department of Parks and Recreation (DPR).

- GS 146-18 states that all recreation, except hunting and fishing, may be regulated in the public interest by the DPR.
- GS 113-36 authorizes the DPR to make reasonable rules for the regulation of the use by the public of state parks and lakes.
- GS 113-29 gives the DPR jurisdiction over any excavation or filling project begun in any state-owned lake through permits issued by the Division of Coastal Management in Wilmington.

There are many other relevant policies, regulations, and statements that have been adopted or written over the years that clarified a number of issues and concerns. Some of these documents are found in the *Appendix 1*, titled *NC Department of State Parks Policies*.

In 1990, the State Attorney General's (AG) Office was asked to render an opinion clarifying the following issues:

- The definition of the term 'state lake',
- The legal statute of such lakes, including the ability to be divested by the state. (Divested is defined as "to deprive, as of rights or property, to sell or otherwise dispose of..."),
- DPR's regulatory authority over state lakes, and
- DPR's management responsibilities for state lakes, including the ability to delegate those duties to other governmental agencies.

In defining 'state lakes' the opinion by the State AG's Office stated that a state lake "may be generally assumed to include any lake in which North Carolina holds a fee simple title...", which was established in the 1827 and 1911 legislation. **Therefore, White Lake is a state park.** The opinion further stated that "DPR's duties concerning state-owned lakes are found in Chapters 113 and 146 of the General Statutes dealing with natural resource conservation and development". The fact that White Lake is state property gives it special status, which includes state management duties and regulatory authority.

These and other pieces of state legislation provide a set of parameters for how White Lake is managed by relevant state agencies, and that it is a public asset for use by the general public. A 1990 opinion from the State AG's Office stated that "...In the case of those lakes explicitly designated under North Carolina laws as 'state lakes', the State is charged with managing those properties as a public trust resource, including the prevention of unlawful, private encroachment on attendant public rights."

The opinion further stated that "the (DPR) has broad regulatory authority over state lakes as a public trust resource. Consequently, government regulations reasonably related to resource protection authority will be valid. Such regulations could (with) validity restrict boating on state lakes, including a complete ban on the use of motorboats under

appropriate circumstances”. Finally, the AG’s Office opinion further states that “a key issue here involving the administration of state lakes is the accommodation of adjacent private property interests. The present system of pier permits was initiated largely to accommodate landowner interest while protecting the right of public access, use, and enjoyment.”

DELINEATION OF AUTHORITY

There has historically existed some confusion about what state or local entity has authority or jurisdiction over what issues with regard to White Lake. The parameters and authority vested to each of the following need to be forefront in any effort to undertake a LMP. A successful plan has to involve each entity.

White Lake Town Board

The Town of White Lake was officially chartered in 1951. A copy of the 2009 consolidated charter is attached. **Attachment 5**. Municipalities in North Carolina have broad powers over many aspects related to the governance of their jurisdiction. The Town Board of Commissioners is the elected body responsible for operation and maintenance of the town's infrastructure such as water and sewer, management of land use and development within its jurisdiction, law enforcement, fire protection and other public safety concerns.

In 1972, the Town of White Lake adopted a zoning ordinance in order to help manage growth around the lake. This ordinance was revised and readopted in July of 2021.

As the lake body is state property up to the high water mark, the Town has no legal authority to enforce ordinances or laws involving the lake itself. The Town must seek approval from the appropriate state agency to undertake activity involving the lake. However, the Town does have a significant impact on the lake; especially related to water quality and clarity. The town's footprint on the land surrounding the lake is significant, especially in terms of land use and development activities, public utilities, and stormwater discharge.

State of North Carolina

There are three (3) State agencies involved in the management of White Lake. These are:

- North Carolina Department of Parks and Recreation (DPR)
- North Carolina Department of Environmental Quality (DEQ)
- North Carolina Wildlife Resources Commission (WRC)

Of these three, the DPR and DEQ have the most relevant impact to lake issues being discussed in this plan. One way to understand the enforcement area of these two Departments is that DEQ is interested in issues *below* the water surface and DPR is interested in issues on the water *surface*. The WRC is only interested in wildlife and aquatic species.

Department of Parks and Recreation (DPR)

The NC Department of Parks and Recreation (DPR) exists to 1) help conserve and protect natural and ecological resources within the state park's system, 2) provide and promote recreational opportunities throughout the state, and 3) provide educational opportunities and promote stewardship of the state's natural and cultural resources. The park system's statutory mandate is to protect representative samples of the state's significant archeological, geological, scenic, recreational, and biological resources.

White Lake is part of the Singletary Lake Management area which includes Singletary Lake, White Lake, Bay Tree Lake, and Salters Lake. The field office is located at Singletary Lake Park.

The state statutes provide that every state park have a general management plan. The White Lake General Management Plan from 1996 is attached. **Attachment 6.**

For White Lake, the DPR staff provides oversight of the lake that includes the inspection seawalls/bulkheads, permitting and inspecting piers, establishing buoys to separate boating and swimming areas, general park management duties, enforcement of certain laws, and other duties as assigned. One assigned duty is to monitor the lake water outlet pipes located in Turtle Cove (more on this outlet later).

The effect of current state lake regulations was meant to establish a process through which permits could be issued, but there are few provisions for limiting the number, size, or placement of such structures (piers, buoys, seawalls/bulkheads). Currently the local park staff are monitoring the following:

- 298 piers, with five more under construction. Staff from the Singletary Lake Group Office feel that White Lake is nearing its reasonable limit for new piers. The greatest pressure for new piers is associated with the subdivision of large lots, creating new requests for permits, and some of the larger commercial properties adding new piers.
- 445 buoys, not counting illegal buoys or unmarked anchors. Removal of illegal buoys and anchors is very time consuming and labor intensive. Anchors which are not visible can be a significant safety hazard.
- 151 seawalls/bulkheads, some of which may encroach over the high water mark. Seawalls and bulkheads moderate shore erosion, but are contrary to the maintenance of a natural shoreline condition.

As a benchmark to growth of these structures, in 1996 there were 280 piers, 286 buoys, and 95 seawalls/bulkheads. The percentage increases from 1996 to 2022 are 6%, 56%, and 59% respectively.

DPR issues:

Access by the DPR. The DPR does not own any land around the lake except for a .06-acre lot purchased in 1960 and located on the southern shoreline for staff to use as a boat access.

High Water Mark. The lake shore above the high water mark is private property. The high water mark has not been surveyed and its exact location is sometimes in dispute. A survey of this boundary should be considered for determining oversight territory such as land use controls by the town and issues relevant to DPR and DEQ.

Public Access. The lakeshore is almost completely developed. Technically a legal public right-of-way exists, although access is across privately developed facilities. There is also a public street, Town Hall Street, but there is no parking or other access. Even so, few options exist but to use the privately owned bathhouses, concessions, and pier facilities for beach access. No land has been set aside for public park purposes. This is counter to the intent expressed in state regulations which were created to “properly control such private use that the public shall not be excluded from its rightful use of such state property which has been devoted to recreational purposes”. All of the other state-owned lakes have adjacent land that allow for access and use by the public.

Seawalls/Bulkheads. The proliferation of seawalls/bulkheads and watercraft has resulted in increased congestion, safety issues, and water quality issues.

Access and control over the outlet at Turtle Cove. This outlet is a critical asset to the health of the lake. Without this outlet the lake would not have any mixing ability of the water as it would remain confined as if it were in a bowl. Also, in times of excessive rains, the lack of any outlet would only exacerbate flooding conditions. This outlet is currently on privately owned land that DPR does not necessarily have jurisdiction over. The Town of White Lake and/or DPR should consider acquiring this outlet or acquiring land for their own outlet as a way to regulate water levels.

NC Department of Environmental Quality (DEQ)

DEQ is the agency charged with the environmental protection and quality of the state's surface waters and ground water resources. They are the public health side of water quality. A significant factor in their charge is that they are a regulatory agency, not a lake restoration agency. On behalf of the Environmental Management Commission (EMC) which issues pollution control and other related permits, the agency monitors compliance with permits (such as municipal wastewater discharge permits) and conducts regulatory enforcement. They evaluate water quantity and quality by taking measurements and evaluating samples. They develop water quality standards, rules, management

strategies, and provide educational awareness. Their authority comes primarily from NC General Statute 143-215, which may be found in ***Attachment 7***.

Examples of how the DEQ interacts with White Lake would include taking samples of algae to determine if it is toxic or otherwise harmful to humans and other species, or taking water samples to be analyzed by the Bladen County Health Department (BCHD) to determine if there are harmful pathogens or bacteria present. Should any samples show signs of being detrimental to public health, the BCHD has the authority to close the lake to public use. They do not, however, have the authority to rectify the issue. Another example would be the monitoring of discharge pipes into the lake for permit violations and remedial actions by the owner. An important factor is that when the issue involves surface runoff, DEQ only monitors runoff within the roadways circling the lake (White Lake Drive, US 701, and NC Highway 53).

The Division of Water Resources (NCDWR) is a division within DEQ that is also relevant to White Lake in that they are responsible for water **quantity and quality** monitoring, planning and permitting. Within DWR are the sections dealing with water planning, water quality and water sciences. In most cases, staff from the Fayetteville Regional Office are the front line staff involved with White Lake.

It is also important to note that DWR has responsibility for monitoring groundwater, a significant contributing resource for White Lake and an integral element in any future LMP.

The Division also does drought monitoring, which has a direct link to lake water levels.

DEQ Issues

Ability to address aquatic vegetation issues. The lack of understanding by the public and others that DEQ has no authority or ability to directly address the algae/aquatic vegetation issues and has limited resources with respect to invasive aquatic vegetation. They can take samples for the presence of toxin-producing algae and report the results to the Bladen County Health Department (BCHD). If there is an issue that would endanger the public health, the (BCHD) may act, issuing a public health notification or possibly closing of the lake to swimming and recreation.

Turtle Cove Outlet. The Turtle Cove outlet should be maintained and even be set aside as an asset owned by either DPR or the Town. This includes the outfall ditch from the outlet pipes to NC Highway 53. They believe, as does DPR, that this outlet is critical to helping flush the lake when the water level gets high enough. An engineered control structure should be considered so that the lake level can be dropped prior to a hurricane to reduce potential flooding.

Exfiltration of untreated sewer into the groundwater. The seeping of untreated wastewater into the lake is a concern that should continue to be addressed. The

Department applauds the Town's repair and replacement program underway for the collection system. However, the available grants/loans are restricted to being used for publicly owned portions of the collection system, and therefore cannot be used to address the old sewer laterals from the various structures around the lake that empty into the groundwater and/or lake. Many of them are old and may have been placed into service with inferior and/or obsolete materials.

Monitoring stormwater and other outfalls into the lake. Without a true public access point, it is difficult to inspect the many existing outfalls to determine compliance with their discharge limits. DEQ is unaware of any permitted discharges to the lake.

NC Wildlife Resources Commission (WRC)

The NCWRC was created by the General Assembly in 1947 to help conserve and sustain the state's fish and wildlife resources through research, scientific management, and wise use of public input. The NCWRC is the regulatory agency responsible for the enforcement of the state's hunting, fishing, trapping, and boating laws.

Their Mission Statement reads as follows:

"To conserve North Carolina's wildlife resources and their habitats, and provide programs and opportunities that allow hunters, anglers, boaters, and other outdoor enthusiasts to enjoy wildlife-associated recreation."

As stewards of public lands, the Commission has authority to comment on permits that may affect public trust resources, investigate alleged encroachment or usurpations that violate public trust rights, and initiate civil actions to remove or restrain any unlawful encroachment upon or any violation of public trust rights of people of the State or legal rights to access public trust areas.

The function, purpose, and unity of the Commission shall be "to manage, restore, develop, alleviate, conserve, protect, and regulate the wildlife resources of the State".

The WRC is found under the Department of Environmental Quality (DEQ). White Lake is part of the Fourth District which includes Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson and Scotland Counties.

The powers of the WRC include:

- the ability to comment on, and object to permit applications submitted to state agencies which may affect the public trust resources in land and water, to protect public trust resources,
- investigate alleged encroachments upon actions that violate public trust rights,
- initiate contested case proceedings (Chapter 150B) involving permit decisions by State agencies or initiate civil actions to remove or restrain any unlawful or unauthorized encroachment of public trust rights.

The WRC also has enforcement authority and jurisdiction over all aspects of:

- boating and water safety
- hunting and trapping
- fishing exclusive of fishing under the jurisdiction of the Marine Fisheries Commission
- activities in woodlands and on inland waters.

Their inspectors and protectors have law enforcement authority, including the right to ticket land owners or violators.

Issuing boating permits is also a part of the WRC. In 1959, the Boating Safety Law was enacted, and the responsibility for its administration and enforcement was delegated to the WRC, including licensing of all boats with motors over 10 horsepower. In 1965, the General Assembly passed legislation making the WRC the exclusive state agency authorized to regulate the operation of watercraft.

The Inland Fisheries Division within the WRC manages, conserves, enhances, and restores the freshwater public trust aquatic resources in the state. It also maintains active research, survey and monitoring programs to collect data essential to inform the development and implementation of science-based conservation and management actions.

The Law Enforcement Division within the WRC has the mission to conserve wildlife resources, promote safe and responsible boating, provide public safety through both proactive law enforcement and the instruction of quality education.

The Land and Water Access Division of the WRC oversees five areas of operation that include public boating access, public fishing areas, game lands, forestry, and the agency's land acquisition program.

In general, the WRC looks to the local DPR Ranger to help enforce WRC rules. However, for issues such as a large fish kill, the WRC will dispatch staff to investigate the event.

[WRC Issue](#)

The lake has seen an increase in recreational fishing; especially over the last decade. While this is good for the local economy, it also results in increased motorboat traffic.

AREAS OF CONCERN BY STAKEHOLDERS

As part of the development of a Comprehensive Development Plan for the Town, the LRCOG conducted a survey of town residents, visitors and other stakeholders during the Spring of 2022. The return of surveys totaled almost 600, which is an astounding number of responses for a locale of this size. It shows the interest and concern by everyone about the future health of the lake. From the collating of the responses, coupled with input from past public meetings, it is clear that there are many issues of concern. As relates to the lake itself, the responses indicate that the issues of primary concern are:

- quality of the lake water,
- clarity of the lake water,
- the level of the lake,
- over development of the lakeshore, and
- lack of public access to the lake.

These areas of concern dovetail into those expressed by other stakeholders and state agencies.

CRITICAL ISSUES AND TECHNICAL TASKS

The next two sections deal with the hydrogeology of the lake area and the water quality of the lake body. Because of their technical nature, the LRCOG engaged the services of two individuals with qualifications in these areas.

Curtis Consolvo, a Licensed Geologist, was assigned the task of researching and writing about the hydrology and geology of White Lake and the immediate area. Mr. Consolvo has worked with the LRCOG on several projects over the last few decades. His initial work with the LRCOG involved helping to put together a comprehensive study on the hydrology (groundwater) in the Southern Coastal Plain. That early 2000 study is still used today as a significant resource relevant to our region. Curtis has also worked with a number of other entities in the region on projects related to his expertise.

Dr. Diane Lauritsen has a Master's degree in Water Resource Sciences and a Ph.D. in Aquatic Ecology and has been working with the Town of White Lake for over the last four years with water quality issues that have included monitoring and sampling work, meeting with different stakeholders on behalf of the Town, and writing reports on various subjects related to the lake.

Working with these two individuals, the LRCOG has been able to undertake a significant level of research and data gathering to bring forth the best available information to be used in this study.