

# The Sustainable Working Waterfronts Toolkit

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## *Engaging the Legal Community in Working Waterfronts*

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**ENGAGING THE LEGAL COMMUNITY  
IN  
WORKING WATERFRONTS**

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The *Sustainable Working Waterfronts Toolkit* is a web-based portal that contains information on a range of regulatory and policy tools waterfront communities can use to preserve, enhance, and protect their working waterfronts. Many of these tools cannot be effectively implemented without the assistance of lawyers working in both the private sector and for local and state government. A network of attorneys with relevant experience and knowledge who are willing to work with waterfront stakeholders is needed to facilitate the implementation of the regulatory and policy tools identified in the *Sustainable Working Waterfronts Toolkit*. This report outlines various strategies that might be undertaken by the National Working Waterfront Network (NWWN) to develop and encourage the growth of a Working Waterfront Legal Community.

## I. Background

The National Working Waterfront Network (NWWN) is a nationwide network of businesses, industry associations, nonprofits, local governments and communities, state and federal agencies, universities, Sea Grant programs, and individuals dedicated to supporting, preserving, and enhancing our nation's working waterfronts and waterways. The NWWN's mission is to increase the capacity of coastal communities and stakeholders to make informed decisions, balance diverse uses, ensure access, and plan for the future of their working waterfronts and waterways.

The NWWN strives to, among other things:

1. Support outreach and education activities that facilitate information sharing, including national symposia and a web-based clearing house, and celebrate our nation's working waterfronts; and
2. Work collectively to develop and provide access to the historical, economic, financial, legal, and policy information and resources NWWN members and partners need to address working waterfronts issues at the local, state, regional, and national level.

As part of these efforts, a subcommittee of the NWWN was formed to pursue funding from the U.S. Economic Development Administration (EDA) to develop a *Sustainable Working Waterfronts Toolkit*.

The *Sustainable Working Waterfronts Toolkit* is a web-based portal that contains a wealth of information about the historical and current use of waterfront space, the economic value of working waterfronts, and legal, policy, and financing tools communities can use to preserve, enhance, and protect these valuable areas. Sharing this information with communities is an essential first step toward increasing knowledge and awareness of the range of tools and options that are available.

Coastal communities seeking to protect and enhance their working waterfronts can do so by implementing a number of policy and legal tools. Utilizing local land use planning authorities, coastal communities can incorporate provisions giving preference to traditional waterfront businesses and uses into comprehensive plans and zoning ordinances. State and local tax policies

can provide incentives for maintaining working waterfronts through tax breaks or tax deferral programs. Historic preservation laws can be used to preserve waterfront areas with significant historic or cultural value. Legal tools, such as conservation easements and eminent domain, and a variety of financing tools can help communities preserve or acquire valuable working waterfront real estate.

Determining the right mix of policy and legal tools can be challenging for coastal communities starting or growing working waterfront initiatives. City and county attorneys may not have experience drafting the types of documents or negotiating the types of agreements working waterfront advocates may be calling for in their communities. In addition, waterfront users and business owners seeking to take advantage of working waterfront incentive programs may need the assistance of tax or estate lawyers to draft conservation easements or contracts.

Securing effective and affordable legal representation can be challenging for both individuals and local governments. A network of attorneys with relevant experience and knowledge who are willing to work with waterfront stakeholders is needed to facilitate the implementation of the tools identified in the *Sustainable Working Waterfronts Toolkit*. This report outlines various strategies that might be undertaken by the NWWN to develop and encourage the growth of a Working Waterfronts Legal Community.

## **II. Social Networking Site: Connecting Lawyers with Lawyers**

The *Sustainable Working Waterfronts Toolkit* web portal includes a social networking center, utilizing a Ning platform. The *NWWN Community Center* will provide a forum for anyone interested in working waterfronts issues to engage in discussion, exchange ideas, pose questions, and network with colleagues. Members can use groups to connect with other members in the same region or with similar interests. Groups can be public or private and have their own discussion forum, RSS reader, text box, and comment wall that are separate from the *Community Center*'s forums and features.

The *NWWN Community Center* provides an opportunity to establish a virtual network of lawyers working on working waterfronts issues. A "Lawyers Group" could be formed to encourage attorneys around the country to share resources and information. Because of confidentiality concerns, the Lawyers Group should be private, with information on the group page visible only to group members who are licensed attorneys. To control membership, the group should be moderated by the Ning network administrator. New members would have to apply to join the Lawyers Group and the administrator would need to approve their request before they could join.

The technical aspects of the virtual network are rather straightforward. The primary challenge will be getting attorneys to join the *NWWN Community Center* and actively participate in the Lawyers Group. Although the benefits of networking are well known within the legal community, it may be difficult to convince attorneys to join another social networking site, as many already use LinkedIn for professional networking. At least initially, the NWWN will need to highlight the added value of making connections through the *NWWN Community Center*. By networking with

others working on similar issues, lawyers can learn about recent or pending litigation, legislative or regulatory activity, and data, information, and expert sources that may be helpful in their cases or other work. Networking can also help lawyers discover how the law works in real-life situations, which is sometimes quite different from what is on the books. The *NWWN Community Center* will also allow members to tap into the wider NWWN for information, resources, and possibly clients.

The NWWN may need to recruit a small group of attorneys with working waterfronts-related expertise to be an “advance guard,” so to speak, for the Lawyers Group. These attorneys could be tasked with suggesting topics for discussion, generating initial content for the site (*i.e.*, blog posts), and recruiting new members. Once membership within the Lawyers Group reaches a critical mass, the group should be self-sustaining. Someone, preferable an appointed group administrator, should monitor the Lawyers Group page for significant reductions in activity so timely interventions can be planned.

Although the establishment of a virtual network to connect lawyers with other lawyers working on similar issues will provide an important service to the legal community, it should not be viewed as an end in itself. Rather, once established, the Lawyers Group could become the NWWN’s “panel of legal experts” that could be contacted by coastal communities from around the country for information and advice. The Lawyers Group is potentially the first step towards development of a more formal legal assistance project, which might include pro bono, low bono, and traditional for-fee services.

### **III. Working Waterfront Legal Assistance Project: Connecting Lawyers with Clients**

As mentioned earlier, working waterfront communities, landowners, and users often need the services of a lawyer at some point to implement the law and policy tools highlighted in the *Sustainable Working Waterfronts Toolkit*. Lawyers will be needed to negotiate agreements, assist with business and tax forms, and draft legislation, regulations, ordinances, policies, and other documents. Lawyers will also be needed at times, unfortunately, to defend government actions or an individual’s rights in court.

Individuals, organizations, and communities with legal questions related to working waterfronts issues need help connecting with lawyers capable of fulfilling their legal needs. Finding a good lawyer with the requisite knowledge and expertise can be difficult, even for clients who can afford such legal services. A Working Waterfront Legal Assistance Project could help make those connections, and in the process provide legal services necessary to protect and preserve our nation’s working waterfronts.

Legal assistance projects can take a variety of forms. Most projects focus on a particular practice area, such as the death penalty, domestic violence, or community economic redevelopment. Some projects are referral services only, conducting client intake and passing that information to

lawyers who independently represent clients. Others have lawyers on staff that provide complete representation, either through the project or in partnership with law firms.

The NWWN is currently an all-volunteer, unincorporated, loosely affiliated organization with limited resources. The design of a Working Waterfront Legal Assistance Project would be driven primarily by the organizational needs and limitations of the NWWN. As discussed in more detail below, a Working Waterfront Legal Assistance Project functioning primarily as an information provider for attorneys and a referral service for clients is probably the most feasible strategy for the NWWN to pursue at this time.

#### **A. Working Waterfront Legal Assistance Project “Brainstorming Team”**

As part of the *Sustainable Working Waterfronts Toolkit* project, the National Sea Grant Law Center convened a small group of lawyers with expertise in either providing pro bono services or representing working waterfront clients to think about what a Working Waterfront Legal Assistance Project might look like. Through a series of conference calls and one-on-one interviews, the “Brainstorming Team” discussed key issues that would need to be addressed and considered a range of possible program models. The key questions for any legal assistance project are:

1. Who are the clients?
2. What services does the project provide?
3. Who are the volunteer lawyers?
4. How is the project governed?
5. How is the project managed on a day-to-day basis?

What follows is a broad outline of core issues the NWWN would need to wrestle with before launching a Working Waterfront Legal Assistance Project, along with recommendations for a Working Waterfront Legal Assistance Project design, based on input from the Brainstorming Team and additional research.

#### **B. Who are the Clients?**

In the original *Sustainable Working Waterfronts Toolkit* grant proposal, submitted and funded by the EDA, the Working Waterfront Legal Assistance Project was conceived as the “Working Waterfront Pro Bono Network.” Engagement in pro bono work is a form of public service, with lawyers donating their time and expertise to benefit others. Through pro bono work, lawyers can give back to their communities, help individuals in need, promote causes that are important to them, and gain new skills and expertise. Rule 6.1 of the ABA’s *Model Rules of Professional Conduct* defines pro bono as the provision of “legal services without fee or expectation of fee to (1) persons of limited means; or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.”

Although some potential working waterfront clients might qualify for pro bono services, it has become apparent that many will not meet the income or organizational requirements. Focusing the Working Waterfront Legal Assistance Project exclusively on the provision of pro bono services may unduly restrict the clientele base. The volunteer attorney pool risks also being narrowed, as not every attorney can afford to accept clients for free. Large law firms have greater ability to cover the costs of providing pro bono services than small firms and solo practitioners.

A more inclusive, and possibly effective, option for the Working Waterfront Legal Assistance Project is to focus on providing “low bono” assistance, defined by Model Rule 6.1(b) as the

1. Delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
2. Delivery of legal services at a substantially reduced fee to persons of limited means; or
3. Participation in activities for improving the law, the legal system or the legal profession.

A low bono legal assistance project would dramatically increase the number of individuals, organizations, and communities that could potentially be helped and may encourage more attorneys to participate who would otherwise be wary of volunteering due to financial constraints. It should be noted, however, that many large law firms participate in the Law Firm Pro Bono Challenge<sup>®</sup>, an aspirational pro bono goal developed by the Pro Bono Institute (PBI). PBI’s definition of pro bono tracks closely to the ABA’s definition, but it is not identical. If the NWWN wishes to tap into the resources of large firms, at least a portion of the clientele may need to be “persons of limited means” or organizations working to address the needs of such persons. A Working Waterfront Legal Assistance Project, therefore, should encompass the range of legal service providers (pro bono/low bono/fee-for-service) to maximize access to qualified attorneys.

Because the NWWN is national in scope and organizationally still in its infancy, the primary challenge in launching a legal assistance project will be keeping the program manageable. The NWWN could easily be flooded with requests for assistance from all over the country from extremely diverse clientele, such as landowners, surfers, fishermen, local governments, and community organizations. The clientele base may initially need to be restricted to ensure adequate representation and client satisfaction.

One clientele group that might be feasible for the NWWN’s Working Waterfront Legal Assistance Project to focus on is non-profit organizations with working waterfronts as part of their missions. There are a number of existing models the NWWN could look to for guidance in focusing a legal assistance project on non-profit organizations. Community Legal Resources (<http://www.clronline.org/>) based in Michigan arranges for pro bono legal services to nonprofit organizations rather than individuals. The Pro Bono Partnership ([www.probonopartner.org/](http://www.probonopartner.org/)) serving the New York tri-state area provides free business and transactional legal services to

nonprofit organizations serving the disadvantaged or enhancing the quality of life in neighborhoods.

Although not technically a “clientele group,” the Working Waterfront Legal Assistance Project could also strive to serve the needs of lawyers providing legal services to working waterfront communities or businesses as a logical outgrowth of the *NWWN Community Center’s* Lawyers Group. The Lawyers Group could be viewed as a practice group, similar to those created by Probono.net (<http://www.probono.net/>). Probono.net practice groups are virtual networks of public interest lawyers. Through the websites maintained by Probono.net and their partner legal assistance projects, practice group members have access to a number of resources, including volunteer opportunities and training and reference materials. Similarly, the Working Waterfront Legal Assistance Project could build on the resources compiled for the *Sustainable Working Waterfronts Toolkit* and develop additional resources needed or requested by members of the Lawyers Group. These resources might include training manuals on particular working waterfronts issues, in-person/online Continuing Legal Education courses, and model documents.

As the NWWN and the Working Waterfront Legal Assistance Project mature, the volunteer lawyer base grows, and additional funding is secured, NWWN could explore an expansion of services to other clientele groups, such as municipalities or individuals. A track record of success with a limited number of clients could provide the firm foundation needed for future growth.

### **C. What Services does the Project Provide?**

Lawyers provide clients such as non-profits, as mentioned above, with a range of services, from free consultations to complex, multi-year litigation. It is important for a legal assistance project to clearly identify what services will be provided by project and volunteer lawyers at the outset in order to manage expectations and prevent misunderstandings. Needs of the targeted clientele and capacity of the volunteer lawyers should determine the types of legal services provided.

Litigation requires significant investment on the part of a lawyer or firm, both in terms of money and time. Fortunately, working waterfront legal issues do not generally need to be settled by the courts. In most situations, conflicts can be resolved through private negotiations, property transactions, and regulatory or policy changes. As such, the NWWN should consider limiting the Working Waterfront Legal Assistance Project to the provision of non-litigation legal services.

For lawyers, the Working Waterfront Legal Assistance Project could focus on fulfilling working waterfronts research, training, and policy needs. The Project could host Continuing Legal Education courses on working waterfronts-related legal topics, such as conservation easements, tax-increment financing, and public access. Training materials and model documents, such as working waterfront easements, access contracts, and trusts, could be developed to promote implementation of new legal tools. The Project could also engage in policy work, conducting legal research on developing issues and drafting model ordinances and regulations. These services would benefit the wider legal community, increasing awareness and familiarity with legal tools and making them easier to implement.



For non-profit clients, legal services might include consultations and transactional work. Through the Working Waterfront Legal Assistance Project, non-profits could be connected to volunteer lawyers willing to answer general questions, help them think through potential legal pitfalls, and provide referrals. The project could also offer direct representation to qualifying non-profit organizations needing assistance on transactional matters. Transactional lawyers help clients manage business risks, structure agreements, negotiate terms and conditions, and draft documents for financial and property transactions. In the working waterfronts context, transactional work might involve the review and drafting of legal documents and direct representation on zoning issues, property sales/acquisitions, and tax matters.

#### **D. Who are the Volunteer Lawyers?**

Volunteer lawyers for the Working Waterfront Legal Assistance Project would need to be recruited from around the country. They can be drawn from firms, government agencies, and academia. Different lawyers possess different skills; legal services they can provide will vary based on their type of employment.

Active recruitment will be necessary and the method will vary by type of practice. Most large law firms have pro bono coordinators that manage the firm's pro bono efforts. Some federal and state agencies also have pro bono coordinators. The NWWN could approach these coordinators individually to encourage participation. State and local bar associations could be contacted to reach smaller firms and solo practitioners. Presentations could also be made at professional conferences and meetings, such as relevant gatherings of the American Bar Association.

Law school clinics, many of which are providing similar legal services but to different clientele, are also good sources of volunteer lawyers. Today, almost every law school has a legal clinic to provide students with experiential learning opportunities and many are transactional clinics. There are dozens of potential partners, including some with extensive experience on working waterfronts issues such as the University of Florida Conservation Clinic (<http://www.law.ufl.edu/academics/clinics/conservation-clinic>), an initiative of the Environmental and Land Use Law Program at the Fredric G. Levin College of Law in Gainesville, Florida. Some clinics focus on nonprofits, like Wayne State University's Business Law & Community Clinic (<http://law.wayne.edu/academics/business-clinic.php>).

#### **E. How is the Project Governed?**

The American Bar Association, in its *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*, which is available online at [http://www.americanbar.org/groups/probono\\_public\\_service/policy/standards.html](http://www.americanbar.org/groups/probono_public_service/policy/standards.html), encourages programs to establish a governing body which (1) adopts broad general policies; (2) regularly reviews the program's operations; (3) assumes responsibility for the financial integrity of the program; and (4) assists in fundraising, volunteer recruitment, and public relations. According to the ABA, the governing body should include members who represent various segments of the legal community and "members of the community at large, with special emphasis on participation by client community."

If established, the Working Waterfront Legal Assistance Project would be a program of the NWWN. There are two possible options for a governance structure. The first option is for the NWWN Steering Committee to serve as the Project's Governing Body. The Steering Committee is the representational governance body of the NWWN. Following a yearly nomination process, NWWN members elect individuals to serve on the 15-member Steering Committee. Through this process, the NWWN strives for geographic and topical diversity among Steering Committee members. Steering Committee members serve staggered, 3-year terms.

Governance by the NWWN Steering Committee has the advantage of leveraging an existing bureaucratic structure. In addition, most Steering Committee members have good connections and communications with the targeted clientele in some geographic areas. There are significant disadvantages, however. The Steering Committee is responsible for NWWN governance, including fundraising strategies, membership recruitment, strategic planning, and policy development. Assigning the Steering Committee the additional responsibility of Project governance could exceed its organizational capacity. NWWN Steering Committee membership would need to be adjusted to ensure representation from the legal community and client community. This is not necessarily a significant barrier, as it could be achieved by dedicating two membership slots for (1) a practicing attorney with experience representing clients on working waterfronts issues; and (2) a representative from a working waterfronts non-profit, local government, or other client community. Other Steering Committee members, however, would likely need an extensive orientation or training related to legal assistance projects in order to effectively provide oversight to the Working Waterfront Legal Assistance Project.

A better governance option would be for the NWWN Steering Committee to appoint an Advisory Board to serve as the Working Waterfront Legal Assistance Project's Governing Body. This would allow the NWWN Steering Committee to appoint advisors with relevant expertise, which would reduce the workload of individual Steering Committee members. The option might also reduce the need for orientation and training, although individuals with expertise related to the provision of low bono and pro bono legal services may not be as knowledgeable about working waterfront issues. Advisory Board members may need to be routinely briefed on the substantive issues. This governance model has the disadvantage of creating an additional bureaucratic structure (Advisory Board) for the NWWN to manage.

#### **F. *How is the Project Managed?***

Although the NWWN Steering Committee can develop policy and provide high-level project oversight (governance), it should not also be tasked with project management – the day-to-day operation of the Project in accordance with the policies and goals established by the Governing Body. Steering Committee members are serving in a volunteer capacity, and most have full-time jobs. For the Working Waterfront Legal Assistance Project to be successful, someone has to be responsible for project management. This position would be similar to a pro bono coordinator at a law firm or other organization. The Project Coordinator's responsibilities would include assisting the governing body with fundraising and policy development regarding clientele, case management, and program evaluation; handling administrative tasks such as case screening, placement, and tracking; and recruitment and outreach.

The Working Waterfront Legal Assistance Project Coordinator could be a full- or part-time lawyer or non-lawyer, depending on the size of program and the job responsibilities. There is a range of options that the NWWN could explore. The NWWN could hire someone to serve as the Project Coordinator. An estimated \$100,000 a year is needed to fund a full-time coordinator and programmatic costs. The feasibility of this option is obviously dependent on NWWN becoming a self-sustaining organization with permanent funding.

Another possibility is for the NWWN to locate a law firm willing to “adopt” the Working Waterfront Legal Assistance Project as part of their existing pro bono program. By partnering with an existing pro bono program, the NWWN can take advantage of a firm’s existing case screening and tracking systems and established network of volunteer attorneys at significant financial savings. This type of partnership, however, might limit the types of services provided, narrow the clientele base, and reduce opportunities for small firm and solo practitioners.

## IV. Getting Started

Obviously, a Working Waterfront Legal Assistance Project cannot be created overnight. A significant amount of strategic and organizational planning is required, as with the launch of any new project. The official launch of the *Sustainable Working Waterfronts Toolkit* and the *NWWN Community Center* in March 2013 at the National Working Waterfronts and Waterways Symposium in Tacoma, Washington, however, provides an excellent opportunity to begin creating a virtual network of lawyers working on working waterfronts.

If the NWWN seeks to move beyond professional networking to the provision of legal services, some serious thought will need to go into the Working Waterfront Legal Assistance Project’s design, implementation, and funding. For example, a formal needs assessment of target clientele has not yet been conducted, and the extent and scope of legal assistance needs remains unclear. The NWWN may wish to consider tasking a NWWN subcommittee, such as the Law and Policy Subcommittee, with responsibility for further developing the ideas briefly outlined in this white paper. At a minimum, this report recommends that the Subcommittee be tasked with:

- Conducting a formal needs assessment;
- Exploring funding and partnership opportunities; and
- Investigating organizational and governance models.

The *Sustainable Working Waterfronts Toolkit* is available at:

<http://www.WaterAccessUS.com>

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