

A Review of the Woodlake Situation and Outlook

This paper's underlying assumption: The lake is **the** principal and unique feature of the Woodlake development; and as such, its restoration is **the** linchpin to improving property values and our quality of life.

Some dam basics:

- The total dam is just under a mile long, with a width of 15' at its crest, and **was** made up of three elements:
 1. A 273' concrete spillway with 10 water retention/release-control gates – now replaced by a breach.
 2. Earthen dam elements on either side of the concrete spillway.
 3. Two six' wide outlet pipes, controlled by manually operated up-down "guillotine" type gates.
- The lake area was ~1,200 acres, with its depth varying depending upon the specific topology of the lakebed, i.e., from very shallow, to ~14'.
 - Since the actual "point-depth" of the lake varied, the "official lake depth" is measured as the lake's **surface**, in feet above *Mean Sea Level* (MSL).
 - "Full pool" for the lake was, ~223.5'MSL.
 - The lakebed at the breach is, ~209'MSL.

Some dam breach basics:

- The breach is ~175' wide at the lakebed level (209'MSL), and ~300' wide at the top.
- The breach results in a basic "*water in = water out*" situation, i.e., the breach provides **no** flood attenuation.
- Flooding downstream of the breach occurs after most heavy rainstorms.
 - Floods buildings and roads; and, most importantly, it makes SR690 (the principal road to Fort Bragg) impassable.

The current dam spillway rebuilding options, relevant factors, and their likelihood of success:

1. Woodlake Country Club Corporation (WLCCC) actually follows through with their stated goal of rebuilding the dam.
 - a. **Very unlikely** given their financial state, and ongoing legal impediments, (liens/judgments), and debts.
2. A new Woodlake (WL) owner invests and rebuilds the dam's spillway.
 - a. **Very unlikely** given the ongoing legal issues reference WL ownership, previous promises to repair/rebuild, legal impediments (liens/judgments), and debts.
3. *Moore County Board of Commissioners* approves a bond, via the recently passed and signed by the N.C. Governor *State Bill 190*, to finance rebuilding the dam's spillway.
 - a. **Very unlikely** given their **often-repeated** public opposition.
4. FEMA rebuilds the dam's spillway **if it remains private property**.

- a. **Very unlikely**, given that “*public money*,” i.e., tax money isn’t available to help restore **private** property – our dam is currently private property.
- 5. U.S. Army Corps of Engineers (USACE) rebuilds the dam’s spillway.
 - a. Same issue as FEMA - **Very unlikely**, given that “*public money*,” i.e., tax money isn’t available to help restore **private** property.
- 6. WL residents pitch in \$\$ to rebuild the dam’s spillway.
 - a. As long as its owned by **other than** the WL property owners, that’s a **very unlikely** scenario.
 - b. Most importantly, raising the amount of money needed via some methodology deemed equitable by the majority of WL property owners is **VERY, very unlikely**.
- 7. Incorporation of WL into the *Village of Woodlake*.
 - a. That’s a viable, but long-range option.
 - b. *WL Village* could issue a bond to finance the dam’s spillway rebuilding, but it would not be able to do that immediately after incorporation – it would need to develop an adequate financial position and credit rating.
 - i. Incorporation, assuming it could be achieved (not a sure thing), is **not** a near-term dam spillway rebuilding solution.
- 8. The breach stays in place – two basic options:
 - 1. Potential to turn the lakebed into a well-managed and attractive wetland.
 - i. Possible, but certainly not a preferred option.
 - 2. Do nothing and let Nature take its course.

There are two principal paths to a restored lake: 1. The Moore County (MC) bond option via N.C. Senate Bill 190 (now law); and/or an approach in which a governmental agency funds and executes the lake remediation, a.k.a., the State Park option.

Path # 1 - The Moore County bond option:

The N.C. Senate Bill 190, (the MC bond enabling legislation), was signed into law by the N.C. Governor on 1 August, 2019.

The **verbatim** text of the signed bill, now law, with highlighting of key points, and comments inserted in blue font:

SESSION LAW 2019-190
SENATE BILL 190
AN ACT TO EXPAND THE AUTHORIZATION FOR A COUNTY TO IMPOSE A SPECIAL
ASSESSMENT FOR DAM REPAIR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-210.1(b) reads as rewritten:

"(b) Sunset. – This Article expires July 1, 2020, for projects that have not been approved under a final assessment resolution. For projects authorized in G.S. 153A-210.2(a1), this Article expires July 1, 2022. The expiration does not affect the validity of assessments

imposed or to be imposed or bonds issued or authorized or to be issued or authorized under the provisions of this Article if a final assessment resolution has been adopted prior to the effective date of the expiration."

SECTION 2. G.S. 153A-210.2(a1) reads as rewritten:

"(a1) Dam Repair Project. – The board of commissioners of a county may make special assessments as provided in this Article against property that is contiguous to a lake, and benefits from access to the same lake, for the purpose of repairing the dam of that lake.

This text makes it quite clear that it applies to waterfront property.

The provisions of this subsection only apply to the following:

(1) A privately-owned dam formerly used for textile mill purposes, forming a lake between 225 and 325 acres in area.

(2) A privately-owned dam formerly used for **flood attenuation purposes**, forming a lake between 1,100 and 1,300 acres.

The authority provided in this subdivision applies **only if all** of the following conditions are met:

a. The board of county commissioners directs the county board of elections to conduct an advisory referendum on the question of whether to make the special assessment authorized in this subdivision.

b. The election is held in accordance with the procedures of G.S. 163A-1592*, and the form of the question to be presented on the ballot concerning the special assessment authorized by this subdivision is as follows: "[] **FOR** [] **AGAINST** Special assessment for repairing a dam formerly used for recreational and flood control purposes and forming a lake between 1,100 and 1,300 acres."

c. (if) A majority of those voting in the referendum vote for the special assessment authorized in this subdivision.

d. The board of county commissioners, by resolution and after 10 days' public notice, makes the special assessment authorized in this subdivision."

SECTION 3. This act is effective when it becomes law. *When the N.C. Governor signed it, it became law.*

*** § 163A-1592. Special elections; procedure:**

(a) Any county, municipality, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the governing body of the county, municipality, or special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the local board of elections. The resolution shall call on the local board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. In setting the date, counties,

municipalities, and special districts are encouraged to set a date that will result in the highest possible voter turnout.

However, the special election may be held only as follows:

- (1) At the same time as any other State or county general election.
- (2) At the same time as the primary election in any even-numbered year.
- (3) At the same time as any other election requiring all the precincts in the county to be open.
- (4) At the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.

(b) Legal notice of the special election shall be published no less than 45 days prior to the special election. The local board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This subsection shall not apply to bond elections.

Summary of N.C. Senate Bill 190, now N.C. law:

What it provides is the legal authority for the *Moore County (MC) Board of Commissioners (BOC)*, **should they want to do it**, to establish a “*Special Tax District*” at WL, and potentially issue a bond to pay for the rebuilding of the WL dam **spillway**.

- i. The Terms and Conditions (Ts&Cs) of any bond would be determined based on the prevailing bond market parameters, i.e., its principal amount, interest rate, pay-back timeframe, and its Admin and legal costs.
- ii. A TBD group of WL registered voters would then develop, **in conjunction with MC, (or done by only MC lawyers)**, a draft of the *Tax District’s* boundaries and its Ts&Cs.
- iii. The draft WL *taxing district’s* plan and Ts&Cs would have to be approved by the *County BOC* and submitted to the *MC Board of Elections (BOE)*.
- iv. The *County BOE* would then conduct an **advisory referendum** on the question of whether to make the *Special Tax Assessment* authorized in the Woodlake subdivision. **Referendum voters would be MC registered voters (not sure of that, but that would be determined by the County BOE prior to the vote).**
 - o To establish the *taxing district*, 50% of the registered property owners **in the proposed taxing district** would have to vote “yes,” and that 50% would have to represent 66% of the value of the total property in the proposed taxing district.

Note: Recall what the law’s text specified: *The board of commissioners of a county may make special assessments as provided in this Article against property that is contiguous to a lake, and benefits from access to the same lake.*

- i. Depending on the bond’s principal amount, interest, bond payback duration, and “debt administrative/legal service” costs, the property owners in the approved *taxing district* would pay an **annual “tax”**. The “tax” would **not** have an upfront “down payment,” rather it would be some number of month payments of **equal amounts**.

1. Post-property sale, the tax accrues to the property, not the previous owner. The new owner would be obliged to pay that tax, just as they would the “normal” MC property tax.
 2. The tax amount owed could be paid off early with no penalty; thus, avoiding accrued interest, and other ongoing charges.
- ii. **(Opinion):** The tax amount would be based on the MC tax valuation of individual property owners’ **property**, at the time of the *tax district* establishment. It would **not** be based on the combination of the property and home.
 - iii. **(Opinion):** Payees of the *Special Tax* would subsequently have “free” access to the lake – that benefit is passed on to subsequent property owners, as long as they are paying the *Special District* tax. Property owners not paying the *Special District* tax would not be accorded this “free” access benefit.
 - a. Access to the lake, free or otherwise, would depend upon the owner of the lake at the time of the *Special Tax District’s* establishment, but could be specified as part of the *Special Tax District’s* Ts&Cs.
 - iv. **(Opinion):** If the lake remains privately owned, the costs of ongoing maintenance and repair would have to be addressed.

OPINION #1:

A discussion of a recommend the *Special Tax* basis would be determined follows – hang in there, it’s complicated:

- Given that the most challenging part of this would be securing a 50% “yes” vote, with property owners representing 66% of the total property value located in the proposed *Special Tax District*. What properties are included in the Taxing District and their MC tax valuation are critical to achieving the required 66% of total value and 50% “yes” vote.
- Based on the new law’s wording, i.e., “contiguous to a lake,” waterfront property owners (~550), would be in the new Taxing District.
 - In general, the waterfront properties would have the highest MC tax valuations; thus, a waterfront *taxing district* would have the highest likelihood of meeting **both** the required 50% and 66% thresholds.
- Why recommend using the MC **property** tax valuation vs. waterfront footage? Waterfront footage can be determined by the actual footage of the waterfront, or by a straight line from the corners of the property line. There is no indisputable database with that information, and any result would be challenged by countless property owners, eating up a lot of time and effort. The MC tax valuation would not be subject to such challenges, as the County tax valuation appeal process would have already passed.
- Why recommend using the MC property tax valuation of **property only**, vs. property plus home? A property owner of unimproved waterfront property would realize a substantial increase in their property value, as would an owner of waterfront property with a home; but, by using a combination of property plus home, the property owners with a home would bear a disproportionate share of the tax burden, when compared to a unimproved waterfront property owner. A property owner that has invested their money in a large home shouldn’t be penalized again, as they already pay a disproportionate share of the WL POA assessments which are based in MC tax valuations.

- What if WLCCC still owns waterfront property? WLCCC would not get a vote as a corporation is not a registered voter and given experience, would not pay any taxes or assessments. The WL ownership issue must be resolved prior to any Taxing District establishment. So, we'll just have to wait and see how the WLCCC ownership and control issues are resolved.
- What if those in the "district" don't achieve the 50% and 66% thresholds? Well then, some other dam rebuild approach would have to be tried; or, we just get used to looking at a lot of vegetation in the lakebed.

As you can see, the *Special Taxing District* approach to rebuilding the dam's spillway, while technically viable, has numerous failure points, not the least of which is the *MC Board of Commissioners* often and publicly stated opposition to initiating the requisite bond. They could easily "slow-roll" the process and run it out of time.

OPINION #2:

A discussion of how we suggest the dam's spillway be funded and repaired by a government agency, or agencies, e.g., FEMA and the USACE follows – this is also complicated:

- The desired outcome is a fully restored lake, i.e., "full-pool" at 223.5' MSL, and the lakebed cleared of safety and environmental hazards.
- The underpinning of the suggested approach is that a fully *N.C. Dam Safety Law* compliant dam is a needed flood-attenuation element for the vulnerable downstream SR690 areas, and areas adjacent and leading to Fort Bragg, e.g., Spring Lake, and the *Little River* basin.
 - As such, it's a governmental issue; and thus, "public/tax money" could be used.
- We would need a political "champion" to facilitate the needed actions with the following governmental entities: our US Congressman (Richard Hudson), FEMA, N.C. State, Fort Bragg Senior leadership, the USACE, N.C. Dam Regulators (Department of Environmental Quality – DEQ), and the MC BOC.
- The goal would be to frame the issue in terms of "flood-attenuation," safety, and access to Fort Bragg. To use "public money," the lake would have to be designated as a State/County "park," with controlled public access via individual **paid-for** park passes for non-WL residents.
 - Public access would **not** include any access to the gate controlled North or South sides of the WL development.

Ongoing steps to garner specific dam spillway design information, engineering parameters, and attendant estimated costs follow:

- Please recall that the USACE is the dam rebuild permit authority. They granted DEQ a dam rebuild permit with a five-year validity. That validity expires in March, 2022. A request for a one-year extension is routinely granted = March 2023.
 1. DEQ has **verbally committed** to transfer that permit to a TBD WL property owners' lake and dam ownership organization **when it was ready to rebuild the dam.**

The Engineering Study:

- The *Restore Woodlake Committee (RWLC)*, with the concurrence of the *WL POA Board*, has contracted with the *Schnabel Engineering Company*, (the company that engineered the breach), to conduct a preliminary engineering study to determine the following:
 1. Task 1 – Evaluation of Conceptual Spillway Alternatives:
 - Perform preliminary engineering analyses to hydraulically size two conceptual alternatives. A combination of principal spillway (such as a small labyrinth) with a staged auxiliary spillway (such as two separate armored overtopping elevations) will be considered. This report actually presents three conceptual alternatives to provide more variability in options.
 - Provide a comparison of the inflow and outflow of the dam in its current breached condition, and the outflow for the alternatives to show the impacts of the alternatives on the flow.
 - Provide the results of these analyses, and descriptions and preliminary dimensions of the alternatives in a letter report (completed).
 - Prepare order-of-magnitude cost estimates and provide a qualitative comparison of the alternatives (completed).
 - Provide sketches of the alternatives (completed).

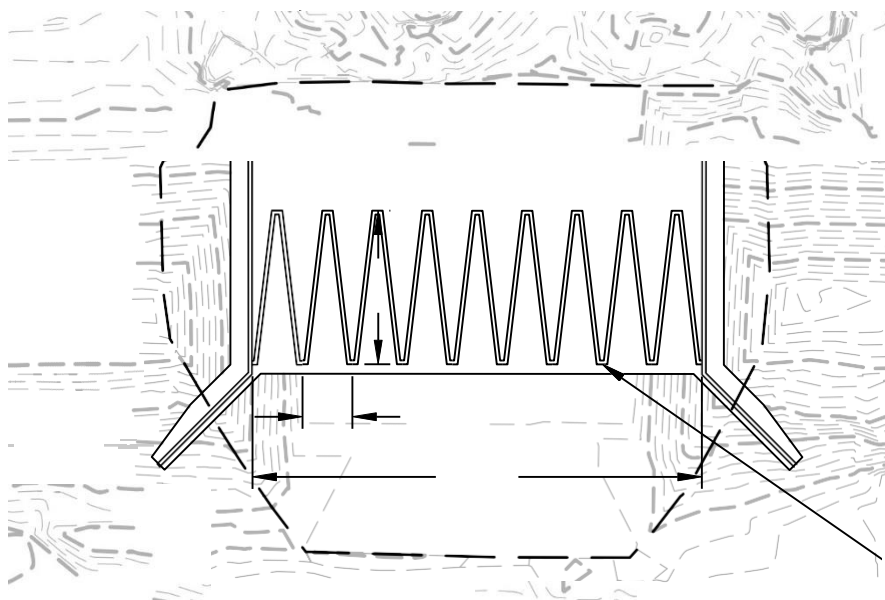
Task 2 – Meeting with Client

- Representatives from the RWLC met face-to-face on 5 Aug 2019, with Schnabel to discuss the results of the engineering evaluation.
 - Schnabel invited *Crowder Construction Company* for constructability and design-build planning input.
 - Some alternative approaches, which include considerable lakebed dredging were discussed. The RWLC will get back to the WL Community when the alternatives are formally scripted.
- **Design parameters:**
 - The Standard Design Flood (SDF) for Woodlake Dam, as required by NC DEQ Dam Safety, is the $\frac{3}{4}$ Probable Maximum Precipitation ($\frac{3}{4}$ PMP) events.
 - The watershed upstream of Woodlake is approximately 95 square-miles in Harnett, Lee, and Moore Counties.
 - **Design recommendation:**
 - In order to refill the reservoir and provide adequate spillway capacity, a new labyrinth weir spillway was proposed. The labyrinth spillway was selected as the primary spillway for all three alternatives, due to its large spillway capacity, while still providing a footprint that fits inside of the previously breached section of the dam.
 - A labyrinth spillway is an overflow weir, folded in plan-view (see the following diagram to understand the weir construction pattern), to provide a longer total effective length for a given overall spillway width. All three labyrinth spillway

alternatives were designed with a crest at elevation of 222.8 (feet MSL), in order to match the normal pool provided by the pre-breached dam and spillway.

- **The recommended alternative:**

- Alternative 1 consists of nine-cycle concrete labyrinth spillways, with a total weir* length of 1,483.6 feet.
- *A weir dam is a barrier set at a specific height, placed across a flow of water, allowing water to flow only when it exceeds (overflows), the height of the weir.
- The horizontal width of the labyrinth would be 234 feet, with a capacity of 45,430 cubic-feet-per-second (cfs), with the reservoir at the top of dam elevation of 230' MSL. The proposed labyrinth geometry for Alternative 1 is presented is shown below:



Single-Stage Labyrinth,
Crest at 222.8' MSL

An aerial view schematic of the recommended Alternative # 1.

The study's take-aways:

1. To rebuild the spillway **commercially**, the **estimated** cost for the recommended alternative would be **\$7.9M** (not yet settled). That cost does not include any "management reserve," and does not include needed lakebed prep.
2. Given the cost of a **commercial** rebuild, our goal should be to secure the USACE's capabilities, and frame the dam spillway rebuild as a training exercise, whereby the USACE provides labor, equipment and permitting, and FEMA/N.C. State pays for material.
 - Facilitating that is the **significant** challenge for the RWLC, and State and Federal representatives.
 - The RWLC, based on this engineering study, will request a dam rebuild permit extension from the USACE to March of 2023.

3. Based on the cost of a commercial dam spillway rebuild (at least ~\$7.9M), plus lakebed prep costs, we believe a N.C. State/MC Park*, with a USACE restored lake is the only viable alternative.

***Note:** The legal and practical Ts&Cs of setting up a State/County lake park will have to be determined to ensure the privacy and security of WL residents is protected via a suitable park pass sales process, strict limit on the number of passes, an effective park admission access process; and, that the lake and dam will be properly maintained and patrolled by the State/County.

Based on some inquiries, we offer the following: A WLCCC Bankruptcy Scenario

Let me begin by stating that the RWLC is not a bankruptcy expert, but we have done considerable research on the subject.

Bankruptcy basics:

- Two principal avenues for a business bankruptcy exist*:
 1. **Chapter 7.** The purpose of Chapter 7 bankruptcy is to immediately liquidate, usually via a Judicial Lien Auction overseen by the applicable court and sheriff's department. The sale (auction) of the business debtor's assets proceeds are used to first pay any outstanding State, County, or federal tax bills, then legal, and auctioneer fees and finally pay-off the creditors, assuming there is any remaining money left.
 2. **Chapter 11.** Chapter 11 bankruptcies are designed to allow a struggling business time to restructure or reorganize in order to revive the business. The business gets to keep its assets while it's in the process of reorganizing, usually under the oversight of a Court appointed Trustee. That is what Woodlake Partners did in the 2015 bankruptcy leading up to Steiner's successful auction bid that led to the creation of WLCCC.

*As a note: generally, court ordered "punitive damages" are not dischargeable (forgiven) in a bankruptcy proceeding – unlike most judgments against a defendant, punitive damages awards are not dischargeable in bankruptcy so long as the relevant cause of action was based upon willful and malicious actions. That was the wording the Moore County Superior Court judge used in the 2018 WL Class Action Suit when he awarded \$121M in punitive damages against WLCCC.

OPINION: WLCCC's current legal and financial situation is such that a Chapter 11 reorganization isn't an option any Bankruptcy Court would approve, so it will be a *Chapter 7* filing, with punitive damages as a significant consideration.

The flow of a WLCCC bankruptcy:

- The presiding court would be the *United States Bankruptcy Court for the Middle District of North Carolina*, in Greensboro – same as in 2014/2015.
- WLCCC lawyers would file for bankruptcy.

- The Court would rule on the applicable filing Chapter, i.e., 7 or 11.
- The Court would gather information on the applicable creditors, i.e., to whom WLCCC owes money.
 - The creditors would be required to provide proof of their claimed debt.
 - The current debts/liens, in priority sequence are:
 - The U.S. IRS – tax amount, if any, unknown.
 - The State of N.C. – tax amount, if any, unknown
 - Moore County tax - ~\$280K.
 - The former Geosyntec lien that Steiner Consulting purchased - ~\$374K - disputable.
 - The Steiner/WLCCC Deed of Trust (DOT) - ~\$2.5M - disputable.
 - The POA lien - ~\$125K.
 - The WL Class action lien - ~\$167M, with ~\$121 of that amount in punitive damages.
 - The State of N.C. - ~\$1.2M for the dam breach bill.
 - Others unknown at this time.
- The Court would determine the status and priority of the creditors' claims.
- The Court would hold hearings and determine and file its ruling(s), which would most likely result in the judicial lien auction of ALL of WLCCC's assets and property.
 - The RWLC lawyer would contend that:
 - The old Geosyntec lien (\$374K), that Steiner Consulting purchased in October 2018, was invalid, because Steiner Consulting essentially paid off a WLCCC bill for which he, as part owner of WLCCC, was responsible.
 - The WLCCC Deed of Trust, dated 25 Apr 2017 (~\$2.5M) was in investment, vs. a loan, and as such is not the basis for a valid DOT, any more that a stock market loss would be.
 - The structure and management of the DOT does not meet the N.C. legal requirements of a valid DOT.
- If our lawyer's contentions are sustained, the Steiner and WLCC DOT debt claims would be disallowed, putting the POA and the WL Class Action Suit right after any tax liens in the debt priority sequence.
 - If our lawyer's contentions are not sustained, the priority sequence remains the same.
- The judicial lien auction would take place and ALL of WLCCC's assets and property would be auctioned, with the resulting proceeds being distributed to the creditors per the Court's direction (can't predict that). WLCCC would subsequently cease to exist as a N.C. corporation.
 - WL property owners could bid in the dam, lakebed and associated properties, and if they were successful, we'd own a breached dam and an empty lakebed and would then be faced with the lake restoration issue again.

- After the auction, while some unresolved liens may remain, they are against WLCCC which no longer exists; and thus, are essentially worthless.

OPINION: With WLCCC out of the picture, one could speculate what some new WL ownership would do with the Club, golf courses, the lake and dam, but it would be pure speculation and involve many, many variations and options.

A WLCCC bankruptcy is not an attractive option, unless you take into account some considerable level of *schadenfreude* (the pleasure derived by someone from another person's misfortune), in this case, WLCCC and some of its principals.