

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**CERTAIN ACCESS ALTERNATIVES
FOR FALSE CAPE STATE PARK**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 20

**COMMONWEALTH OF VIRGINIA
RICHMOND
1984**

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**Report of the
Joint Subcommittee Studying
Certain Access Alternatives for
False Cape State Park**

**To
The Governor and the General Assembly of Virginia
Richmond, Virginia
February, 1984**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

In 1966, the Virginia General Assembly authorized the acquisition of several thousand acres of land fronting on the Atlantic Ocean for use as a state park. This \$8.5 million purchase was funded jointly by the Commonwealth and the federal government. The tract of land is bordered on the east and west by bodies of water, on the south by North Carolina, and on the north by the Back Bay National Wildlife Refuge. At the time the park was proposed, both state and federal officials intended to provide access to it through the Wildlife Refuge. Measures taken by the federal government in the 1970's reversed this decision, leaving state officials with no vehicular access road to the park. Attempts at reaching a compromise with the federal government so that some means of vehicular access could be provided were unsuccessful. In 1979, Senator Howard P. Anderson, Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, appointed a subcommittee to study ways of gaining public access to False Cape State Park.

The Subcommittee met a number of times in an attempt to find a solution to this access problem. Subsequently, a task force was formed by the Governor to determine what type of access to the Park might be developed. This task force worked with representatives of the United States Department of the Interior to develop proposed solutions to this problem.

The Task Force ultimately recommended that some form of state-federal land exchange take place to supply access to the Park. Pursuant to a resolution introduced by Senator Evelyn Hailey, the General Assembly established a legislative subcommittee to review the alternative solutions to the problem which had been developed by the Task Force, and to recommend any legislative proposals necessary to resolve the access problem (see Senate Joint Resolution No. 67, attached as Appendix B).

At its initial meeting, the Subcommittee elected Senator William T. Parker as its chairman. The Subcommittee toured False Cape State Park, and met with members of the Task Force to discuss their recommendations. After further discussion of the options available to the State, the Subcommittee members agreed that the Commonwealth should begin negotiating with the Department of Interior for a means of access to False Cape. Dr. Betty Diener, the Secretary of Commerce and Resources, was asked to begin this process. Delegate Pickett was appointed by Senator Parker to act as the Subcommittee's liaison in the negotiations. The Subcommittee discussed the desirability of having the Board of Conservation and Economic Development adopt regulations to cut off access to the Park from the south, but chose not to urge such a regulation at this time.

Negotiations took place as recommended, resulting in the development of a draft agreement. This agreement, which if entered into will be between the U.S. Department of Interior and the Commonwealth's Division of Parks and Recreation, states that the Department of Interior will allow the use of an access corridor fifty feet wide by the Commonwealth through the Back Bay Wildlife Refuge for ingress and egress to False Cape State Park.

Such an agreement will benefit persons currently permitted to use the Park. It allows certain limited vehicular uses of the access corridor by current permittees. This use would be compatible with the limited vehicular uses in the Park. The agreement assures the Department of the Interior that the Commonwealth will responsibly maintain the corridor.

The Commonwealth's right to use this strip of land will remain in effect as long as the

Commonwealth (i) maintains the access corridor, (ii) allows only limited motor vehicle use on the access corridor and in the Park, (iii) continues to operate False Cape State Park as a public park, and (iv) agrees not to assign, transfer or use the access corridor in any manner not in accordance with this agreement. The right to use the access corridor will terminate if any of these stipulations are violated and remain uncorrected.

If the Department of Interior determines that the Commonwealth has defaulted in its use of the access corridor, it must give written notice of this default to the Commonwealth. The Commonwealth then has thirty days in which to cure the default or to initiate attempts to cure the default.

Finally, this agreement will allow the Department to retain the right to use the access corridor for its purposes in common with the Commonwealth.

The agreement will become effective upon execution by the Governor and the U. S. Secretary of Interior.

Subcommittee Recommendations

This subcommittee endorses the agreement set out in the legislation attached to this report as Appendix A and recommends that the General Assembly authorize the Commonwealth to enter into this agreement in order to provide a necessary means of access to False Cape State Park.

Respectfully submitted,

William T. Parker, Chairman

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APPENDIX A

**SENATE BILL NO. 359
AMENDMENT IN THE NATURE OF A SUBSTITUTE**

A BILL to authorize an agreement between the Commonwealth of Virginia and the United States Department of the Interior, and to repeal Chapter 322 of the Acts of Assembly of 1950, as amended, relating to a False Cape State Park access corridor and the Coastal Turnpike Authority.

WHEREAS, by Senate Joint Resolution No. 167 of the 1983 Session of the General Assembly, the False Cape State Park Subcommittee was charged with the duty of studying issues and coordinating negotiations between state and federal authorities regarding access to portions of False Cape State Park; and

WHEREAS, obtaining an access corridor to the park and imposing proper limitations on access corridor use can benefit the citizens of the Commonwealth by increasing accessibility into the park; and

WHEREAS, the access corridor would be granted by the United States Department of the Interior; and

WHEREAS, the Subcommittee has reviewed the state and federal issues involved and has coordinated negotiations between the Commonwealth of Virginia and the United States Department of the Interior; and

WHEREAS, Chapter 322 of the 1950 Acts of Assembly, which provided for the acquisition and construction of a turnpike between Virginia Beach and the coast of North Carolina is rendered obsolete by the adoption of the following agreement; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Commonwealth of Virginia's Division of Parks and Recreation of the Department of Conservation and Economic Development, hereinafter referred to as the Commonwealth, is authorized to enter into an agreement with the U.S. Department of Interior, hereinafter referred to as the Department, the agreement being in form substantially similar to the following:*

WHEREAS, the Department has responsibility for the supervision and operation in accordance with applicable laws and regulations of the Back Bay National Wildlife Refuge located within the corporate boundaries of the City of Virginia Beach, Virginia, hereinafter referred to as the City; and

WHEREAS, the Commonwealth has responsibility for the supervision and operation in accordance with applicable laws and regulations of False Cape State Park located immediately south of the Back Bay National Wildlife Refuge within the corporate boundaries of the City; and

WHEREAS, a right of ingress and egress through the Back Bay National Wildlife Refuge to False Cape State Park has been requested by the Commonwealth, and the Department has agreed to grant such right of ingress and egress on the terms and conditions and subject to the reservations set forth in this agreement.

In consideration for the mutual covenants and undertakings herein set forth, the parties hereto do agree as follows:

1. The Department does hereby give and grant to the Commonwealth a right or license of ingress and egress, hereinafter called the access corridor, over and along a strip of land fifty feet in width in the Back Bay Wildlife Refuge, subject to the reservations and conditions herein set forth.

-2. The right to use the access corridor shall remain and continue in effect so long as the Commonwealth complies with the following conditions:

a. The cost of improving and maintaining the access corridor shall be borne by the Commonwealth.

b. No motor-powered vehicle of any kind shall be permitted to use the access corridor except as follows:

(i) A public transportation system operated by the Division of Parks and Recreation of the Commonwealth to transport not more than 2,000 persons per day through the access corridor into and out of False Cape State Park.

(ii) Official vehicles of the Commonwealth and of the City.

(iii) Vehicles engaged in the construction and maintenance of improvements on the access corridor or in the construction and maintenance of improvements in False Cape State Park, authorized by the Commonwealth.

(iv) Police and emergency vehicles.

(v) Vehicles where the operators thereof have been issued permits by the Department pursuant to Public Law 96-315.

c. The Commonwealth shall endeavor to cause the Coastal Turnpike Act, Chapter 322, of the 1950 Acts of Assembly, to be repealed.

d. The access corridor will conform to the natural contours of the refuge landscape, will utilize the East dike where possible, and will be constructed in a manner that does not substantially impede present drainage patterns.

e. The public transportation system will be designed so as to minimize its sound and sight impacts on the Back Bay National Wildlife Refuge.

f. The land, marshes and area comprising False Cape State Park shall continue as now managed under the supervision and operation of the Commonwealth as a public park area and shall remain essentially in their present natural state except for facilities reasonably necessary to accommodate the visitors into False Cape State Park contemplated by paragraph 2(b)(i) hereof. The Commonwealth shall manage that portion of the False Cape State Park maintained in its natural state in a manner that enhances its value to wildlife.

g. The Department and the Commonwealth will endeavor to coordinate to the extent practicable the administration of the False Cape State Park and the Back Bay National Wildlife Refuge.

h. The Commonwealth shall prohibit the use of motor-powered vehicles within False Cape State Park to the same extent as set forth in paragraph 2(b)(i through iv). Holders of federal permits under paragraph 2(b)(v) shall also obtain permits or approval from the Commonwealth to travel through False Cape State Park.

i. The Commonwealth shall provide reasonable personnel resources and cooperate with the Department in maintaining and enforcing the provisions of paragraph 2(b) hereof.

j. The access corridor shall not be assigned, transferred or used except in accordance with this agreement.

3. In the event the Commonwealth shall violate any of the conditions set forth in paragraph 2 hereof, then it shall be in default under this agreement, and if such default is not cured within the time period herein provided, the right to use the access corridor shall terminate, ex proprio vigore.

4. In the event the Department determines that a default has occurred, it shall give written

notice of such default to the Commonwealth stating the basis therefor. The Commonwealth shall immediately cease any activity adversely affecting wildlife and within thirty days cure any other default, if such default can be cured within thirty days, and if the default cannot be cured within that period of time, then the Commonwealth shall initiate action to cure such default within thirty days and such action shall continue in good faith until the default has been cured. If the default is not cured then the right to use the access corridor shall terminate as provided in paragraph 3.

5. The Department shall, to the extent consistent with the access corridor herein given to the Commonwealth, have the right to the reasonable use of the access corridor for its purposes in common with the Commonwealth.

6. Nothing herein shall be construed as authorization by the Commonwealth to any person, firm, corporation, governmental entity or organization of any kind, nature or description to encroach upon, enter or travel through or over False Cape State Park or any portion thereof. Such activities may be conducted only by specific permission of the Commonwealth in accordance with law.

2. That Chapter 322 of the 1950 Acts of Assembly, as amended, is repealed.

3. That this agreement shall be effective upon concurrent execution by the Governor on behalf of the Commonwealth and the United States Secretary of the Interior on behalf of the United States Department of the Interior.

4. The instruments granting and conveying the right or license of ingress and egress along an access corridor shall be signed and executed in a manner and form approved by the Attorney General.

APPENDIX B

SENATE JOINT RESOLUTION NO. 67

Establishing a joint subcommittee to study the proposed state-federal land exchange alternatives between the Department of the Interior and the Commonwealth of Virginia involving portions of False Cape State Park and Back Bay National Wildlife Refuge.

Agreed to by the Senate, February 25, 1983

Agreed to by the House of Delegates, February 24, 1983

WHEREAS, the Governor's False Cape Task Force and representatives of the U. S. Department of the Interior have worked diligently to determine ways of allowing increased though limited access to False Cape State Park through the Back Bay Wildlife Refuge; and

WHEREAS, elements of each of the state-federal land exchange proposals described by Alternatives II (Task Force Recommendations) or V (Preferred Interior Alternative) in the U. S. Department of the Interior's Final Environmental Impact Statement may facilitate access to False Cape State Park; and

WHEREAS, there is a need to have legislative review of the proposed state-federal land exchange between the Department of the Interior regarding portions of the Back Bay National Wildlife Refuge and the Commonwealth of Virginia regarding portions of the False Cape State Park; and

WHEREAS, any proposed land exchange agreement should be legislatively endorsed by both the U. S. Congress and the General Assembly of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee is established to review the alternatives set forth in the U.S. Department of Interior's EIS and the recommendations of the Governor's False Cape Task Force and recommend solutions for the remaining unresolved issues, if any, relating to the proposed state-federal land exchange, and to coordinate the actions of the Commonwealth in this regard with members of Virginia's Congressional Delegation and to recommend such legislation as it deems necessary for introduction into the 1983 United States Congress and the 1984 Session of the Virginia General Assembly.

The joint subcommittee shall consist of four members of the House of Delegates to be appointed by the Speaker thereof, and three members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The cost of conducting this study shall not exceed \$5000.