

W.P.
North Carolina Coastal Management Program

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CZIC COLLECTION

A SHORELINE ACCESS PLAN FOR THE TOWN OF KILL DEVIL HILLS

COASTAL ZONE
INFORMATION CENTER

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INTRODUCTION AND PURPOSE

The North Carolina General Assembly enacted the Coastal Area Management Act in 1974 (CAMA). The basic objective of this act is to establish a comprehensive plan for the protection, preservation, and orderly development of the coastal area of North Carolina. Within the Act, the General Assembly also established the Coastal Resources Commission (CRC). The Commission is responsible for the preparation, adoption, and amendment of the CAMA Land Use Plan Guidelines. Using these guidelines, units of government within the coastal areas adopted land use plans in 1976. The Coastal Resources Commission is also active in the implementation of these local plans and in March, 1979 adopted policies relating specifically to public beach access. (These policies are listed in a subsequent section of this report.)

In determining these access policies, the Coastal Resources Commission was required to comply with the federal regulations found in the March 1, 1978, Federal Register. In these regulations, the Federal Government requires coastal states to consider both physical and visual access. The emphasis however should be on the provision of increased physical access. Special attention should be given to recreational needs of urban residents for increased shorefront access. Physical access may include, but need not be limited to, footpaths, bikepaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. Visual access may involve, but need not be limited to, viewpoints, setback lines, building height restrictions, and light requirements.

While the Coastal Area Management Act clearly addresses esthetics in the purposes section 113A-102, it is the decision of the CRC that provision of access is a local concern to be expressed through local plans. The CRC will determine whether or not the local government has adequately addressed access needs when reviewing CAMA plans.

Public access to the shoreline is also addressed in the Statewide Comprehensive Outdoor Recreation Plan of North Carolina.

This document states that it is an objective of the State that areas of public access be provided along the shores of streams, rivers, lakes, estuaries, sounds, and the ocean in order that citizens and visitors may be able to reach and use inland waters and the Atlantic Ocean. Among these, special emphasis must be placed on insuring public access to ocean beaches and to state lakes. All governmental units providing public recreation opportunities should consider ways and means of insuring that no person is denied use of any public recreation area, facility, or program because of their inability to pay the established fees. All socio-economic groups of citizens must be provided with this ability to recreate in both natural and organized public outdoor provisions of recreational opportunities.

Beach access is a definite part of the general recreational objectives which Kill Devil Hills can continue to develop by using its recreation committee to develop the inventory of available parcels of land in a selective land use pattern. Through this beach access plan, it is the intent of the Town of Kill Devil Hills to identify public accessways, identify methods to properly develop

such access ways in keeping with state policy, and to identify possible funding sources for future development of access ways.

LOCAL SETTING

The Town of Kill Devil Hills is located on the Outer Banks of Dare County. The town has experienced a steady population growth since its incorporation in 1953 and now has an estimated population of almost 850 permanent residents. The town experiences the additional impact of seasonal population which was estimated for 1975 to be over 10,000 people on the peak day. Less than thirty percent of the available land in the town is developed with seasonal and vacation cottages interspersed among permanent residences. Motels, tourist accommodations and commercial enterprises are predominantly located along the ocean beach and along the by-pass highway. The center of Kill Devil Hills is dominated by National Park Service land surrounding the Wright Brothers Memorial.

Kill Devil Hills participated in the building and development expansion which occurred during the 1970's. Over 3 million dollars in building permits were issued by the town in 1972, but as the national economy lagged in 1973, this figure dropped to about one million dollars in 1975. Building activity has again increased since the beginning of 1976 with the lowering of interest rates.

The most severe constraints to development in Kill Devil Hills at this time are the lack of a sufficient water supply and a sewage disposal system. Kill Devil Hills joined Dare County and Nags Head in approving a bond referendum to install a fresh water supply adequate for the needs of the projected population. Until the water system is completed, the town will supplement its water

supply with shallow wells which have been approved by state health officials.

A central sewage treatment system to serve Kill Devil Hills, the developed areas of the northern Dare County Beaches and Roanoke Island is presently under study by engineering consultants. A central sewage system is necessary to solve existing problems with septic tanks and to accommodate desired future growth without endangering valuable estuarine waters or groundwater supplies. Until a central sewage system is available for the town, the county septic tank regulations will maintain lot sizes for new subdivisions and will prevent building on previously platted substandard lots until the necessary utilities are available.

OVERVIEW OF SHORELINE ACCESS PROBLEMS

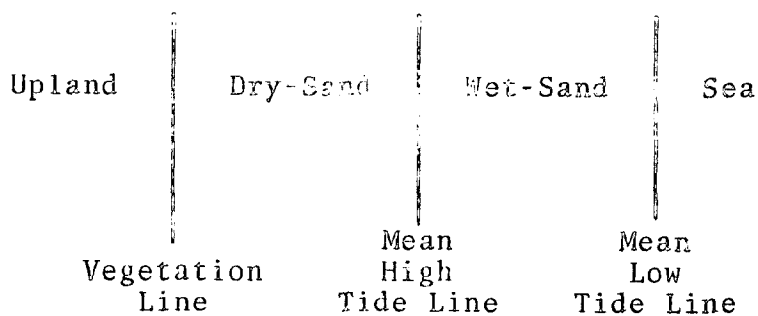
As stated previously, the growth of the tourist industry is having a profound effect on Kill Devil Hills. The ever increasing volume of pedestrians, traffic and other associated activities are creating problems which warrant attention. One emerging problem is the increased need for shoreline access by the general public. The pattern of private ownership is reducing this accessibility.

In many situations in North Carolina, people wish to get to the oceanfront but must cross private property before reaching the shoreline. "No Trespassing" signs are frequently seen on private property. Right-of-ways that now provide access are not adequately identified and are sometimes partially or wholly controlled by adjacent property owners.

In his book, Access to the Nation's Beaches: Legal and Planning Perspectives,¹ David Brower divides the "beach" into four parts: the sea, the wet-sand, the dry-sand, and the upland.

First, that area seaward of the mean low tide line is termed the sea. Second, the area between the mean low tide and mean high tide lines, which is covered by the usual flow of tides, is termed the wet-sand. Third, the area between the mean high tide line and the line of vegetation or dune line, is termed the dry-sand. Fourth, the area landward of the vegetation line is termed the upland. The following diagram illustrates this division.

¹Portions of the Beach Access plan were taken from David Brower's Access to the Nation's Beaches: Legal and Planning Perspectives. UNC Sea Grant Publication, Feb., 1978.



Approximately three-fourths of the coastal states, including North Carolina, have held that wet-sand beaches are publically owned or public trust areas. The Coastal Resources Commission defined a "beach" in Section .0302 of SHOREFRONT ACCESS POLICIES as "areas extending from the mean low to the mean high water line and beyond this line to where either the growth of vegetation occurs, or a distinct change in slope or elevation occurs, or riparian owners have specifically and legally restricted access above the mean high water line." Further, the CRC added that "this definition is intended to describe those shorefront areas historically used by the public. Whether or not the public has rights in the defined areas above the mean high water mark can only be answered by the courts. The public does have clear rights below the mean high water mark." The Shorefront Access Policies recognize public use rights in the beach areas as defined but do not in any way require private property owners to provide public access to the beach.

Broadly speaking, according to Brower, the state of North Carolina owns the beach seaward of the mean high tide line (wet-sand), but the beach above the mean high tide line (dry-sand and upland) is in private ownership. No North Carolina court case has dealt specifically with access by the public over unencumbered

privately owned land to get to the wet-sand. Thus to reach the public portion of the beach, the general recreation user is faced with the task of passing over private land to get to the public beach area. The simple provision of a public walkway leading from a street or road to the public shoreline (coupled with adequate identification and parking area) can expand the use of the public beach.

There are a number of mechanisms under traditional property law in North Carolina by which the public can acquire rights of access across the upland portions of the beach. These mechanisms are discussed in more detail in the later section of this report.

STATE POLICIES AND STANDARDS
RELATING TO SHORELINE ACCESS

Given guidelines through the Federal Office of Coastal Zone Management, the Coastal Resources Commission of North Carolina has adopted the following shoreline access policies. These policies, along with the Areas of Environmental Concern-structural accessway standards, should be considered in planning for beach access or in the development of specific access sites.

Shoreline Access Policies

(a) Development shall not interfere with the public's right of access to the shorefront where acquired through public acquisition, dedication, or customary use as established by the courts.

(b) The responsibility of insuring that the public can obtain adequate access to public trust resources or the ocean, sound, rivers and tributaries is primarily that of local governments to be shared and assisted by state and federal government.

(c) Public beach area projects funded by the state and federal government will not receive initial or additional funds unless provisions are made for adequate public access. This must include access rights, adequate identification and adequate parking. (See Erosion Projects Funds, 1979 General Assembly)

(d) Policies regarding state and federal properties with shorefront areas intended to be used by the public must encourage, permit and provide public access and adequate parking so as to achieve maximum public use and benefit of these areas consistent with establishing legislation.

✓

(e) State and Federal funds for beach access will be provided only to localities that also provide protection of the frontal or primary dunes.

(f) The state should continue in its efforts to supplement and improve highway, bridge and ferry access to and within the twenty-county coastal area consistent with the approved local land use plans. Further, the state should wherever practical, work to add public fishing catwalks to appropriate highway bridges and should incorporate catwalks in all plans for new construction and for remodeling bridges. It is the policy of the state to seek repeal of ordinances preventing fishing from bridges except where public safety would be hazardous.

(g) In order to avoid weakening the protective nature of frontal dunes, no development will be permitted which would involve the removal or relocation of frontal dune sand or frontal dune vegetation. 15 NCAC 7H 0306 (c). The sands held in the frontal dunes are recognized as vital for the nourishment and protection of ocean beaches.

(h) All land use plans and state actions to provide additional shorefront access must recognize the need of providing access to all socio-economic groups. (See Statutory Authority G.S. 113-A-102 (b); 113A-107; 113A-12A;)

Structural Accessway Standards

The following structural accessway standards were taken from the amended Areas of Environmental Concern Guidelines adopted by the Coastal Resources Commission on April 27, 1979

(15NCAC 7H .039 of C). In order to construct a structural accessway ("catwalks", etc.) across a primary dune, an Area of Environmental Concern development permit must be obtained and conform to the following.

(1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways shall be considered expendable construction.

(2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune if:

- (i) the accessway is exclusively for pedestrian use;
- (ii) the accessway is less than six feet in width; and
- (iii) the accessway is raised on posts or pilings of 5 feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dunes capacity as a protective barrier against flooding and erosion; and

- (iv) any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway which does not meet (i) and (ii) above shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets (2) (iii) above. Public fishing piers shall not be deemed to be prohibited by this rule, provided all other applicable standards are met.

(4) Public expenditures for accessways shall not be allowed on areas created from beach nourishment.

Local Ordinances

In addition to state requirements, the Town of Kill Devil Hills has certain ordinances which pertain to the use of vehicular traffic on the beach and dune area. These ordinances should be adhered to in considering access to the beach.

Sec. 10-37. Driving on sand dunes.

It should be unlawful for any type of vehicle, including but not limited to, automobiles, motorcycles and beach buggies, to be driven on sand dunes within the town; provided, that this prohibition shall not include police and other emergency vehicles. (8-11-70, 1,2.)

Sec. 10-38. Driving on or landing aircraft on beaches.

It shall be unlawful for any person to operate any motor vehicle or land or take off in any aircraft, except in case of emergency, within the following described beach area in the town: Beginning at the northern boundary line of the town and running thence in a southerly direction along the ocean front with the low tidewater line to the southern boundary line of the town; provided, that this section shall not apply to motor vehicles operated upon any regularly established or dedicated road or driveway on private property by the owners of such property, members of their immediate family or by bona fide guests with the written permission of such owner nor shall it apply to the official operation of motor vehicles or aircraft belonging to

or used by the United States Coast Guard Service; and provided, that this section shall not apply to the operation of motor vehicles or automotive equipment belonging to and used and operated by commercial fishermen while such fishermen are actually engaged in the fishing or setting of nets or seines from or in the ocean; provided, that nothing in this section shall be construed to authorize, permit or allow commercial fishermen or any other person to drive across, enter upon or conduct their fishing operations on any private property other than that owned or leased by them except by permission of the owners in the above described area. (9-19-59, 3.)

GOALS AND OBJECTIVES


A goal is defined as the end toward which effort is directed. Goals then, represent desired states of affairs. In order to make goals attainable, there must be some link between the goal and the activities necessary to achieve it. Objectives and policies bridge this gap since objectives and policies are statements of intent and courses of action.

Problems and issues relating to beach access were identified through meetings with the Town Council, the Town Planning Board, Town officials, interviews with local citizens, and information available in the local land use plan. The problems and issues identified were detailed in the "Overview of Shoreline Access Problems" section of this report. Based on this input, the following overall goal and objectives were derived.

Goal: Improve public access to the shoreline area of Kill Devil Hills to protect environmentally sensitive areas and protect the rights of private property owners in the area.

Objectives:

- 1) Identify possible public shoreline access points on right-of-ways of those east to west oriented streets located between the beach and Highway 158 Business.
- 2) Develop, properly identify and encourage public use of recommended accessways in order to prevent erosion of the dune system and minimize trespassing on private property.

- 
- 3) Incorporate State of North Carolina SPECIFIC USE STANDARDS for Structural Accessways in Areas of Environmental Concern when developing public access points.
 - 4) Protect adjacent landowners through the use of vegetative screening and fencing where economically feasible to protect properties from visual intrusions and noise and to protect at the same time, the aesthetic experience for the access user.
 - 5) Seek Federal and state grants, gifts and easements to develop public access areas.
 - 6) Provide for public access in areas where the impact on fragile beach vegetation will be minimal.
 - 7) Provide for continued maintenance of developed shoreline access areas.
 - 8) Provide, where possible, parking areas in the development of public accessways. Where off-street parking is unavailable, encourage side-street utilization of the full right-of-way for parallel parking thereby facilitating public access and increasing economic benefits to the Town.
 - 9) Strictly enforce Town ordinances relating to driving on sand dunes and encourage the adoption of new ordinances which will provide for access in the future.

INVENTORY, RECOMMENDATIONS, AND PRIORITY
FOR DEVELOPMENT OF ACCESSWAYS

Present and Short Range Considerations

To properly analyze beach access areas in Kill Devil Hills, an inventory was compiled. (See specific recommendation list and map.) A model beach access design has been developed which utilizes a typical Town-owned right-of-way. The model makes recommendations for placement of pedestrian accessways, vehicle access, parking, walkways and trash containers. The model should be modified on a case-by-case basis according to the specific recommendations listed herein.

There are thirty streets with Town-owned rights-of-way which may be developed as accessways. At some point in the future, public access demand may necessitate the development of many of these areas. However, for short-range planning purposes only a few of these right-of-ways should be considered for development.

Each of the potential access areas differ in characteristics. For instance, the right-of-way widths range from sixty-feet (adequate for the provision of parking areas) to ten-feet (adequate for walking access only). Some potential access points have large, stabilized dunes in the area where vehicular access should be discouraged; while dunes in other areas are almost non-existent and more conducive as access points for emergency and commercial fishing vehicles, (as addressed in local ordinances). In some instances, driveways radiating from cottages intersect potential accessways requiring alteration of the design and protection of the entrance to the cottage drive.

In any development, protection of the dune system is of paramount importance. As previously mentioned, Coastal Area Management Act (CAMA) permits must be obtained where development is constructed over the frontal dune. Dunes in the vicinity of the accessways should be renourished and vegetated to prevent erosion. If Federal funds are to be obtained, development design must be in harmony with local ordinances.

Signs should be established at all public accessways. Each sign should be low in height with information relating to parking, lifeguards, trash containers, and driving on the beach.

Several of the ten-foot right-of-ways located between Asheville and First Streets may be particularly important to the Town in providing for pedestrian access. These potential access paths would require only a sign designating them as such and additional legal research to determine their exact locations.

Long Term Considerations

In the coming years, as developmental pressures and the number of daily visitors increases, the Town may wish to consider the provision of additional access areas. Long-range consideration should be given to those areas abutting the Roanoke Sound as well as the beach area. According to state and Federal guidelines and policies, public access to the sound is just as important as access to the beach.

Presently, development on the west side of the island abutting the sound, is relatively dispersed when compared to development in the beach sector. A few houses and unpaved streets are characteristic of the existing landscape. While development is not presently intense, the majority of the land has been subdivided and

expectations are that development will occur thereby increasing shoreline access demand. Long range consideration should be given to an additional boat ramp on the sound to be located in north Kill Devil Hills and possible development of existing sound-side right-of-ways. Additionally, access requirements should be incorporated into subdivision regulations.

The Town may wish to consider several long-range actions to provide for continued access to the beach area. These include:

- 1) Purchase of strategically located vacant lots between Fifth Street and the northern Town limits. These lots should be in the proximity of identified access areas;
- 2) Continue to develop potential accessways from Fifth Street to Oregon Street as demand dictates;
- 3) As a very long-range consideration, seek funds to acquire, lease, or gain easement for public beach access in the area between Eighth Street and Martin Street. At the present this sector has fewer potential access points than other areas in the Town;
- 4) Investigate the possibility of placing properties located in the Town and owned by the National Park Service on the Federal Government Surplus Property List. The two parcels of property, each approximately 350 x 800 feet in size, are located between Lowell and Woodmere Streets. The land was condemned by the Department of the Interior to be used as an entrance to the Wright Memorial. Prior to the completion of Highway 158 By-Pass, Park Service Road (which divides the two properties) was the primary entrance to the Memorial. Provided that the property has outgrown its

usefulness, and can be obtained through the Surplus Program, the Town could use the area for public recreation or parking for the Monument Street/Prospect Street potential access areas.

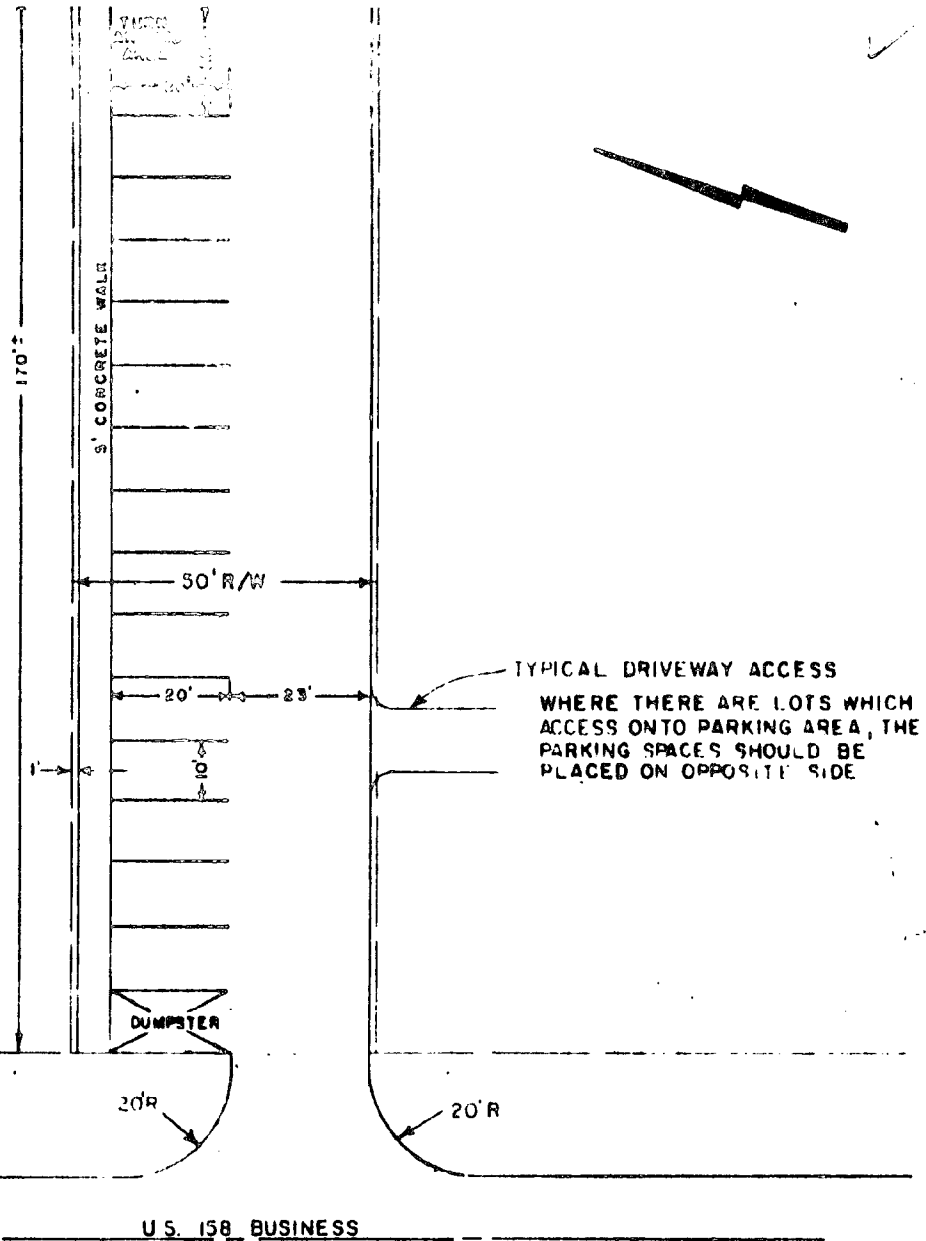
In addition to the physical aspects, the long range needs for visual access can be controlled through height restrictions in zoning and subdivision regulations.

EXISTING LOTS WHICH ARE
ACCESSED BY US 158

TYPICAL PAVEMENT SECTION

6" STONE BASE
2" I2 ASPHALT

▭ PAVEMENT AREA



MODEL

PROPOSED PARKING LOT DESIGN FOR BEACH ACCESS PLAN

KILL DEVIL HILLS

NORTH CAROLINA

SCALE: 1" = 30'
AUGUST, 1979

PREPARED FOR ARPDG
BY
MCDOWELL-JONES PA.
ELIMADETH CITY, D.C.

SPECIAL REPORT ON THE RIGHT-OF-WAYS
FOR BEACH ACCESS AREAS

<u>AREA</u>	<u>RECOMMENDATION</u>	<u>TERM</u>
Dock Street	Maintain parking for boat access	Present
Eighth Street	Utilize right-of-way on west side of 158 Business for parking. Construct catwalk and driveway for emergency vehicles and commercial fishermen over primary sand dune.	Long-range
Lake Drive	Utilize parking in right-of-way of street west of 158 Business. Stabilize and renourish dune.	Long-range
Atlantic Street	Construct to model design. Renourish sand dune.	Short-range
Martin Street	Reestablish right-of-way and develop.	Long-range
Calvin Street	Reestablish right-of-way and develop.	Long-range
Clark Street	Discontinue vehicle use by renourishing dunes. Construct catwalk for pedestrians. Develop to model design.	Long-range
Oregon Avenue	Construct catwalk and revegetate path. No vehicles recommended except for parking.	Long-range
Carlton Avenue	Develop by yielding to driveway rights of entry. Revegetate dunes, construct catwalk.	Long-range
Ocean Bay Boulevard	Extend parking area with pavement and design according to model. Construct timber ramp to permit emergency/commercial fishermen vehicles to the beach.	Short-range
Roanoke Street	Revegetate path. Construct catwalk. Use model design with minimum parking area.	Long-range
Pinehurst Avenue	Revegetate path. Construct catwalk. Use model design with minimum parking area.	Long-range
Sutton Avenue	Develop similar to Pinehurst Avenue.	Long-range
Carlow Avenue	Preserve in natural state. Place sign encouraging parking further down the beach.	Present
Raleigh Avenue	Extend parking area with pavement. Revegetate path and construct catwalk.	Long-range
Ferris Avenue	Revegetate and restrict vehicles as soon as possible. Develop according to the model design.	Short and long-range
Woodmere Avenue	Revegetate dune. Restrict parking to pavement area.	Present

<u>AREA</u>	<u>RECOMMENDATION</u>	<u>TERM</u>
Glenmere Street (Monument Street)	Develop parking area on west side of street with National Park Service land. Restrict vehicles, catwalk only.	Short-range
Prospect Street	Utilize as walking access for parking in adjacent open space land (National Park Service land).	Short-range
Asheville Street	Restrict vehicles on sand area. Utilize with minimum parking.	Present
First Street	Revegetate sand dunes. Construct catwalk at present sidewalk. Extend parking area utilizing full right-of-way.	Long-range
Ten feet accessways between Asheville St. and First St.	Identify walking access paths by signs. Research ten feet sections as to exact locations.	Short-range
Second Street	Develop present pavement with parking on left-hand side (north side). Renourish sand dunes and revegetate. Limit parking development to present upright posts. Construct catwalk.	Short-range
Third Street	Construct mall-type passageway to beach. Restrict vehicles to right-of-way on west side of street.	Long-range
Fifth Street	Utilize parking in right-of-way along Fifth Street west of 158 Business. Maintain no parking with signs indicating only pedestrian pathway from parking across the street.	Long range
Walker Street	Pave right-of-way on west side of 158 Business, utilizing parallel parking on Walker Street. Renourish and revegetate dune and construct catwalk.	Short-range
Hayman Street	Utilize right-of-way on west side of 158 Business, using parallel parking on Hayman Street. Renourish and revegetate dunes to recommended height. Construct timber ramp over renourished dune for emergency/commercial fishermen vehicles.	Short-range
Chowan Street	Develop parallel parking on west side of business highway. Renourish and revegetate dune. Restrict use of vehicles on dune. Construct pedestrian catwalk.	Short-range
Helga Street	**Develop parallel parking on west side of business highway. Establish handicapped parking on paved portion east of the highway. Restrict vehicles. Construct ramp adequate for handicapped. Renourish dune to recommended height.	Short-range
Arch Street	Utilize minimum parallel parking on west side of business highway. Restrict activity to pedestrian use by constructing catwalk. Fill car path with sand material and revegetate to natural height.	Long-range and short-range

** Handicap facilities should be provided for purposes of visual recreation and access. Special catwalk adaptations should be constructed for handicap persons to visually have access to the oceanfront.

LEGAL TOOLS FOR PRESERVING,
PERFECTING AND ACQUIRING BEACH ACCESS

To this date, the most complete gathering of North Carolina laws dealing with beach access is David Brower's, Access to the Nations Beaches: Legal and Planning Perspectives. Chapter five of this publication deals specifically with tools for acquiring beach access. The following discussion is based on information taken from this chapter.

The majority of access problems are results of patterns of beach ownership overlapped by the public's right to the beach. In many communities, access problems can be substantially alleviated by perfection and preservation measures which involve discovering who currently has rights of access and use, and then acting accordingly. These generally will be less costly than outright acquisition measures, easier to implement, and quicker to bring about.

The basic problem remains; more access is needed in appropriate locations to increase the amount of beach available to the public. Means of obtaining access can be classified within three general approaches: (1) legislation, (2) perfection and protection of existing access, and (3) acquisition of new accessways.

Legislation can simplify the task of access acquisition, but should not be considered essential to any beach access program. Adequate legislative authority already exists in most jurisdictions in the U.S. to facilitate the use of at least some acquisition strategies. Perfection and preservation measures as discussed above should provide the groundwork for any beach access program.

This simple means that any program should begin with full knowledge of the existing situation and a solid legal base. To increase the amount of beach access available to the public, acquisition strategies will generally be required. Many of the tools for acquiring access involve the application of general property law concepts to a beach access context. Many can and should be used in concert to most effectively acquire increased public access. It is anticipated that the use of acquisition tools will form the care of most access programs. The selection of tools will depend upon a variety of factors, including local circumstances and access needs, existing legal authority, and available resources.

Legislation

The legislative approach to access acquisition involves the statutory establishment of public rights to beach utilization and access, or evidentiary presumptions which favor public rather than private use.

The legislative approach to the acquisition of beach access is exemplified by the Texas Open Beaches Act. The statute is predicated upon the right of the public to free and unrestricted use and enjoyment of the beach. The Act creates a presumption that the public enjoys a prescriptive easement to use the area between the mean low tide and the line of oceanfront vegetation, or if there is none, the line two hundred feet landward of the mean low tide. However, it does not create a right or presumption for the public to cross the uplands landward of the vegetation to reach the beach. Other states considering legislative solutions to the access problem might consider incorporating presumptions to the public's right to use the uplands, as well as the dry sand, for access purposes.

In North Carolina, public rights of use and access have been established only in the foreshore. Legislation establishing a presumption of public rights of access over use of the dry-sand and uplands (through private property) would be useful in North Carolina to help effectuate more public access. Yet, in North Carolina, legal authority for a wide variety of acquisition tools currently exists.

Perfection and Protection of Existing Title and Access

In many coastal communities, there exists a large number of accessways which the public would have a legal right to use given requisite prior action by city and county governments. Some of these accessways are currently in use by the public for purposes of beach access others are not. In either case, the types of accessways under discussion involve those in which the public has title or can acquire title with relatively minimal effort.

In a beach access context, perhaps the most useful protection and preservation tools are the erection of signs identifying public accessways and public maintenance of accessories.

The search for titles and an inventory of existing and potential access areas is a necessary means for discovering which areas the town can be used as accessways. The specific tools employed to preserve and protect access will depend upon the particular defects in titles. The drawback to preservation and perfection is that it alerts landowners to the option of withdrawing public access by withdrawing dedications. The recent controversy over acquiring access at Holden Beach resulted in a net loss of public beach access.

Perhaps the most visible current application of preservation and perfection techniques can be seen at Carolina Beach, where public accessways are marked and maintained by the municipality. Such actions by local government can both preserve/perfect public rights of access and inform the public as to the location of public accessways and maintained beaches.

Such actions can serve a variety of purposes. For example, the dedication of subdivision streets is contingent upon acceptance by the appropriate city or county government. Such acceptance is also required for dedicated alleyways, which may be platted or otherwise offered to local government. Although express acceptance is one method to ensure that a legal dedication has in fact occurred, withdrawal of the dedicated streets and alleyways is still possible if the local government fails to use the dedicated property in some active manner. Maintenance has been held not only to constitute an acceptance of an offer to dedicate by implication, but is also sufficient to defeat any efforts to withdraw dedicated land. Accordingly, where dedicated roads, right-of-ways, or alleyways can be used to afford public access to the beach, local governmental maintenance of these areas, such as marking these areas with signs and providing waste receptacles and similar litter clean-up services, will both perfect and preserve the public's right to use these areas for beach access purposes.

Acquisition of Access

In acquisition of access areas for public use many techniques can be used that include purchasing, donation, establishment via litigation, and application of land use control mechanisms. Access acquisition can be very expensive. It is often a slow process for the local government.

Access by the purchase of Fee Simple Title is the most direct means of acquiring access. This is the most expensive tool used. Through governmental programs several states have

purchased segments or whole islands for public use. For North Carolina's application in use of this tool, the general authority to acquire interest in real property is granted to North Carolina counties and municipalities in N.C.G.S. 153A-158 and 160A-11. More specifically, N.C.G.S. 15A-444 and 160A-353 authorizes local governments to purchase property for parks and recreational purposes. In addition, the state government is authorized to purchase property under N.C.G.S. 146-22.1. Especially inasmuch as purchase of property for purposes of providing public access to the beaches would undoubtedly constitute a public purpose as construed by the courts, there should be no legal impediments to the use of this tool for purpose of acquiring access.

Acquisition in Fee by Gift can be a form of acquisition by the simple fee, where donation of land for public purposes can be used in the recruiting of property for access. Possibly the main reason charitable donations of land are not more common across the nation is that it does not occur to public officials to ask. Many cases in landownership cannot for some reason simply be given away, so, the aspect of a bargain sale is used in the purchase price.

Acquisition of Less Than Fee Interest is another means by which access can be obtained. Less than fee acquisition, involves the granting by the property owner of a limited right or set of rights to a second party. As a result, the property owner continues to hold the title to the land and is free to use the land in any manner which is consistent with the rights conveyed to the acquiring party. There are four individual ways of acquiring land by less than fee interest.

1. Purchase of Easements
2. Prescriptive Easements
3. Conservation Easements
4. Leaseholds

An easement is the right to use someone else's land in some specifically designated manner. Easements used as a tool for acquiring access are regarded like the purchase of fee simple title. Landowners may grant such purchases because of the tax advantages involve the potential ability to avoid paying capital gains tax on the income derived from the sale of the easement. In the case of access easements, owners of beachfront property may be induced to sell easements if their property can be revalued for taxation purposes. The local town could use easements to provide access between parking facilities and the beach or to reach the beach without disrupting existing beachfront land use. In the purchasing of easements for access in North Carolina, counties and municipalities are authorized to acquire easements "in order to preserve through limitation of their future use of open spaces in areas for public use and enjoyment". North Carolina also allows for revaluation of property for taxation purposes by the landowner who grants an easement in his property.

The prescription of easements, generally speaking, refers to the process where one person obtains the right to use another person's land in some specified manner. Title remains with the original landowner. However, because of the continued use of the landowner's land by some other party, the law recognizes that party's right to continue that use.

Prescriptive easements for access can also be established at the municipal level where there are beaches that local residents customarily use and have used for a requisite number of years. In such beach areas exist, the public may also be able to acquire via prescription, the right to use the dry-sand and uplands area for recreational purposes. The public may also be able to acquire by prescription the right to park vehicles in specified areas adjacent to paths leading to the beach.

Conservation Easements can be secured for access where the landowners convey the easement to a governmental entity or an authorized private organization. This type of easement is a preservation technique.

In a beach access context, the most likely application for conservation easements involve large tracts of property which have not yet been developed. The conditions of the easement contract should be very specific to the use of the land.

The final means of acquisition by Less Than Fee Interest is through Leaseholds. Leaseholds are generally referred to as a lease agreement between two parties. While leases are most frequently utilized as a legal instrument for the renting of buildings and structures (e.g. apartments, stores, offices, etc.), they can be applied to any number of other uses including the provision of farming rights, public fishing and hunting rights on private lands, and public access rights across someone's property.

In North Carolina, Leaseholds can be authorized to provide beach access by North Carolina General statute 160A-11 for local towns and by 113A-135 for the Land Conservancy Corporation.

Immediate needs for access can be served by leased access while long range plans are being developed.

Other Means of Acquisition

Some other means of acquisition of land are :

1. Eminent Domain
2. Implied Dedication
3. Trades
4. Implied Reservation
5. Post Flood Damage Acquisition

Eminent Domain is the process where governmental entities can gain property owned privately in exchange for compensation even if the owner wishes not to sell. The use of eminent domain can be used for beach access purposes in two ways. The first way is very expensive where property can be acquired by condemning areas such as parks, highways, etc. Eminent domain by condemning property easements is the best resource for purposes of access. In N.C.G.S. 160A-241 cities and towns are authorized to exercise powers of eminent domain, and may acquire fee or lesser interests in property. Recreational easements are specifically provided for in N.C.G.S. 160A-241(3). Also cities are granted eminent domain to open, extend, or improve streets, alleys, sidewalks, and public wharves in 160A-241(1).

Implied dedication of areas in subdivision plans for the use of roads, right-of-ways and beach access is the major tool that denotes the public's right to use areas designated as a public way. Most streets and roads in North Carolina are dedicated public as an expressed dedication. The general public may have used this area to the knowledge of the owner and continue to use it over a

period of time. For example, if a purchaser buys land that has been used for an extended period of time by the public for access purposes, and he does not subsequently seek to prevent such use, it may be argued that the purchaser intended to donate to the public an access easement over his land.

Express dedication is applicable to those beachfront roads and right-of-ways that have been expressly dedicated. Such roadways already afford the public legal right of access. Accordingly, the emphasis in express dedication is to discover (e.g. by title search) and utilize existing dedicated roads and right-of-ways, and to encourage the express dedication of new streets and right-of ways.

There are two types of trades which may be used to acquire access. The exchange of trade in land and, the exchange of access rights for development or use modifications or for commitments to assume maintenance responsibilities. Trades of land in North Carolina are specifically expressed in N.C.G.S. 113A-135.

Where the state has previously owned a parcel of land used by the public it is possible to argue that the grant from the state to private reserved for the public's use an easement allowing use of that land his action is representative of an Implied Reservation.

The National Flood Insurance Program can be used as an access tool where loses have been incurred as a result of flooding. Under the National Flood Insurance Act, the Federal Government is authorized to purchase properties damaged substantially beyond repair or where there is greater than 50 per cent damage incurred. For example, when a structure built in a washover is damaged beyond

repair; the property could be acquired, the land cleared and used for access.

Land Use Controls

Through the use of certain land use controls provisions for public beach access can be made. Each technique listed below has been used in North Carolina.

1. Required Pedestrian Access
2. Required Dedication of Roads to Provide Access
3. Water Access Lots in New Subdivisions

Pedestrian access is afforded when provision is made for the design of an accessway in a subdivision. The easiest method of requiring pedestrian access is through a zoning ordinance for both residential and commercial use. An example of such zoning can be expressed through a requirement to include a public accessway of not less than ten feet in width from a public roadway for each development involving more than 600 feet of recreation resource frontage.

Required dedication affords public access to beaches by requiring the extension of roads or right-of-ways to the foreshore and dedication of these roads to the public. Application of the tool will normally involve three distinct requirements:

- (a) The extension of all roads and right-of-ways not parallel to the beach down to the foreshore.
- (b) Public dedication of all such roads and right-of-ways not parallel to the beach.
- (c) Required public dedication of all other roadways in beach-front subdivisions.

The purpose of this tool is to provide vehicular and/or pedestrian access, either to the foreshore itself or to a point very near the foreshore, with pedestrian access on a dedicated right-of-way down to the foreshore. Although only the first two elements listed above are required in order to provide this type of access, in most situations practical considerations will mandate the third element of requiring dedication of all subdivision roads.

Water access lots in new subdivisions is the final tool discussed which provides for accessway to the shoreline or beach. In beachfront subdivisions, it may be possible to effectuate dedication of a subdivision lot with either nominal or no cost to the governmental body involved. The result can be achieved through the use of what has been termed water access or a combination of using water access lots in conjunction with eminent domain.

Water access lots, as used in North Carolina, refer to strips of property fronting a public street and having beach frontage as well. Such lots are usually narrow and on the ground probably indistinguishable from accessways. However, water access lots are platted as lots, and accordingly are not construed to be part of any roadway system.

The method of providing public access by use of water access lots involves two steps. The first is to require, by subdivision control ordinance, that in any beachfront subdivision development containing interior lots (i.e., without beach frontage), water access lot(s) be provided for the benefit of the interior lot owners. In other words, the requirement provides for access for the entire subdivision, but not the public. The ordinance can

require that each water access lot either be dedicated to the public or transferred in fee to the interior lot owners.

If dedication is made to the public, and accepted by the appropriate governmental authority, then the public has acquired the right of access across the water access lot to the beach. However, if the subdivision owner chooses to transfer title of the water access lot(s) to the interior property owners, the public at large still has no right to use that (those) lot(s) unless the land is either purchased or taken by eminent domain.

PROSPECTIVE FUNDING SOURCES
FOR BEACH ACCESSWAYS

National Oceanic and Atmospheric Administration

Under the Coastal Zone Management Act of 1972, Section 315(2), the Secretary of Commerce may make grants to any Coastal State for the purpose of acquiring lands to provide for access to public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value, and for the preservation of islands. The amount of any such grant shall not exceed 50 percent of the cost of the project involved; except that, in the cost of acquisition of any estuarine sanctuary, the federal share of the cost thereof shall not exceed \$2,000,000.

Under this section there is presently no amount of money appropriated for this program to award the states and local governments. The current administration has not endorsed this program because it is similar to other programs in existence.

(This section 315(2) is not listed within the Federal Catalog of Domestic Assistance.)

Department of the Interior

Land and Water Conservation Fund. This source provides monies for acquisition of land for federally administered parks and matching grants for state planning of recreation, and state or local land acquisition of development. The LAWCON is managed by the Heritage Conservation and Recreation service and can provide a program for acquisition and development grants which may be used for projects to support and access facilities for public projects.

This is perhaps the best way to acquire and develop land providing that the eligibilities are met by the local government.

Outdoor Recreation Technical Assistance. Also under the Heritage Conservation and Recreation Service is an agency for advisory and counseling services. This agency is not for an acquisition program, but is useful in planning, developing, financing, and managing outdoor recreation activities. Technical assistance is also given to local and state governments relating to applications for federal surplus property for public parks and recreation in the Federal Surplus Real Property Program. Anyone engaging in conducting outdoor recreation programs may receive assistance or information.

The Technical Assistance Program also aids local and private interests in order to obtain private contributions of land or money, and support for public recreation areas, facilities and programs. Contributions may include donations of cash, land, facilities, leases and easements or bargain sales. Also, where private interests have potential resources, a contract may be drawn up to make available areas or other resources to the public.

Finally, within the Heritage Conservation and Recreation Service is the Surplus Property for Parks Program. Here Federal surplus property can be discounted to state or local governments up to 100 percent. The law requires that deeds of conveyance to state or local governments of surplus be maintained and used for public park or recreational uses in perpetuity or it will be reverted back to federal property. Any state or local government is eligible to apply.

National Park Service. The Park Service is charged with providing for public enjoyment derived through recreational use of

available resources. Through the National Park Service land owned and maintained for recreation may be used as a beach access. The Park and Recreation Technical Assistance Program allows any state and local units of government to apply for technical assistance. This assistance may be for planning, developing, and managing their park and recreation areas.

Department of Housing & Urban Development

Federal Flood Insurance Program. This program is only applicable after an occurrence of loss due to disaster has damaged land and properties which were insured. The damage must be substantially beyond repair. Damaged land can be acquired by state or local agencies for management and use, but must be used for at least forty years as a single land use.

The major difficulty with Section 1362 is that as of June 1977 funds have never been appropriated to implement it. Administrators are studying the feasibility of implementing this section as both a valuable flood plain management tool and as a means of insurance recovery.

Another possible access related use of The National Flood Insurance Act arises from regulations which will require local governments in identified erosion prone areas (yet to be determined) to establish setback for all new development from the ocean, lake, bay, river front or other body of water in order to create a safety buffer or natural vegetation which will be appropriate for wildlife habitats and open space purposes such as recreation. Program administrators are presently developing prototype base maps to delineate erosion-prone areas along the barrier islands, beaches

and the Great Lakes. Hence this aspect of the Act could prove beneficial to both beach access and island preservation.

Department of Transportation

Federal Highway Administration, Highway Research, Planning and Construction. A portion of the enormous Federal-Aid Highway Program may be directed to roadside beautification, recreation (including access roads to recreation areas), bikeways, pedestrian walkways, fringe and corridor parking areas and rest areas. Since grants to state and local agencies under this program are estimated at over six billion dollars for FY 1977, even a very small fraction of this can be significant to a particular project. DOT funds, it would seem, can be used for coastal highways and parkways, rest areas including water access, and bicycle trails. It might be appropriate for this liaison to take place on the state level.

Federal Aviation Administration, Airport Planning and Development. The FAA provides technical and financial assistance to public agencies for the planning and development of airports under its Airport Development Aid Program (ADAP) and Airport Planning Grant Program (PGP). The FAA also coordinates its airport planning with the Department of Housing and Urban Development and with local planning departments so that consideration is given to the use of land surrounding airports for park and recreation facilities. The FAA encourages such consideration because recreational uses are among the few uses compatible with airport operations.

ENVIRONMENTAL IMPACT ASSESSMENT
For The
KILL DEVIL HILLS BEACH ACCESS PLAN

Project Description

This plan identifies and makes recommendations for development of public shoreline access areas in the Town of Kill Devil Hills. Short range, intermediary and long range recommendations for development of 30 access areas have been made. However, each access area in the plan will require specific environmental considerations prior to development.

Probable Environmental Impact of Proposed Action

- A. Air Quality - In the development stage, gasses and other emissions from passenger vehicles and asphalt paving machines would be omitted. These emissions would be largely temporary in nature and no appreciable impact on the environment is anticipated.
- B. Water Quality - The proposed projects will not affect water quality. During the construction phase, measures will be taken to minimize siltation and soil erosion.
- C. Noise - Noise levels will be increased temporarily at a few selected sites during construction and maintenance. Normal noise levels will return after development.
- D. Solid Waste - Only normal patterns of solid waste will be anticipated. The sites should be equipped with proper containers where the public can remove the rubbish from the beach to the container stationed at each developed parking area.

- E. Demand on Utilities Utilization of street lights may be needed for public safety at the developed parking areas.
- F. Aesthetics - The proposed plan for the development of the accessways will provide an area which is aesthetically compatible with the surroundings and adjacent structures.
- G. Ecological Balance - It is anticipated that the habitat of wildlife and botanical resources will not be affected if development occurs. Development may enhance this environment since efforts will be made to reseed dunes and control erosion. In any case, any detrimental effects will be minimal.
- H. Land-Use - Sites, if developed, are located in single-family and multi-family residential areas and would not conflict with local ordinances and land use plans. All development must also be consistent with the Coastal Area Management Act Program and Department of Transportation requirements.
- I. Historic Resources - It is anticipated that no historic sites will be disrupted should development occur. Specific assessments may be required prior to construction.
- J. Socio-Economic Balance - No disruption to the established community or displacement of people will be required. The projects, once completed, will enable all socio-economic groups to utilize the public trust areas.

- K. Recreational Areas - Temporary closure of a few developable accessways may be required during construction; however, accessibility to the beach will be made available through the provision of other access areas.
- L. Dunes and Ocean Hazard Areas - These areas will be revegetated. All development of parking and accessibility will be regulated through the CAMA program. Vehicular traffic will be restricted to specific areas as called for in Sections 10-37 and 10-38 of the Town Ordinances.

Adverse Environmental Effects Which Cannot Be Avoided

As stated previously, there will be some temporary disturbances during the construction phase at certain sites. This includes the disturbances associated with clearing and grading activities. Accepted and required construction practices will keep this impact at minimum levels. All excavated or disturbed areas will be landscaped, seeded and developed in such a manner as to minimize adverse effects. The evaluation of the development areas indicates that there will be no sacrifice or danger to human health or safety. Aesthetics, culturally valuable surroundings, standards of living and other aspects of life will not be adversely effected.

Alternatives to the Proposed Project

Accessway areas are being proposed in this plan for development. Certainly, only a few may be developed in the next five years. In selecting these sites, recommendations have been made in this plan which have the least adverse impact

on the environment or the aesthetics of the surrounding area.

An Additional alternative is no action or deferral of the project. The North Carolina State Government has stated that it is the local governments' responsibility to provide "reasonably adequate public access" to their beach areas. If this is not achieved then future beach erosion projects will not be funded to the local government.

Inventory of All Irreversible and Irretrievable Commitments
of Natural Resources

No impacts are anticipated which would curtail the diversity and range of uses of the environment.

US Department of Commerce
NOAA Coastal Services Center Library
2234 South Hobson Avenue
Charleston, SC 29405-2413

