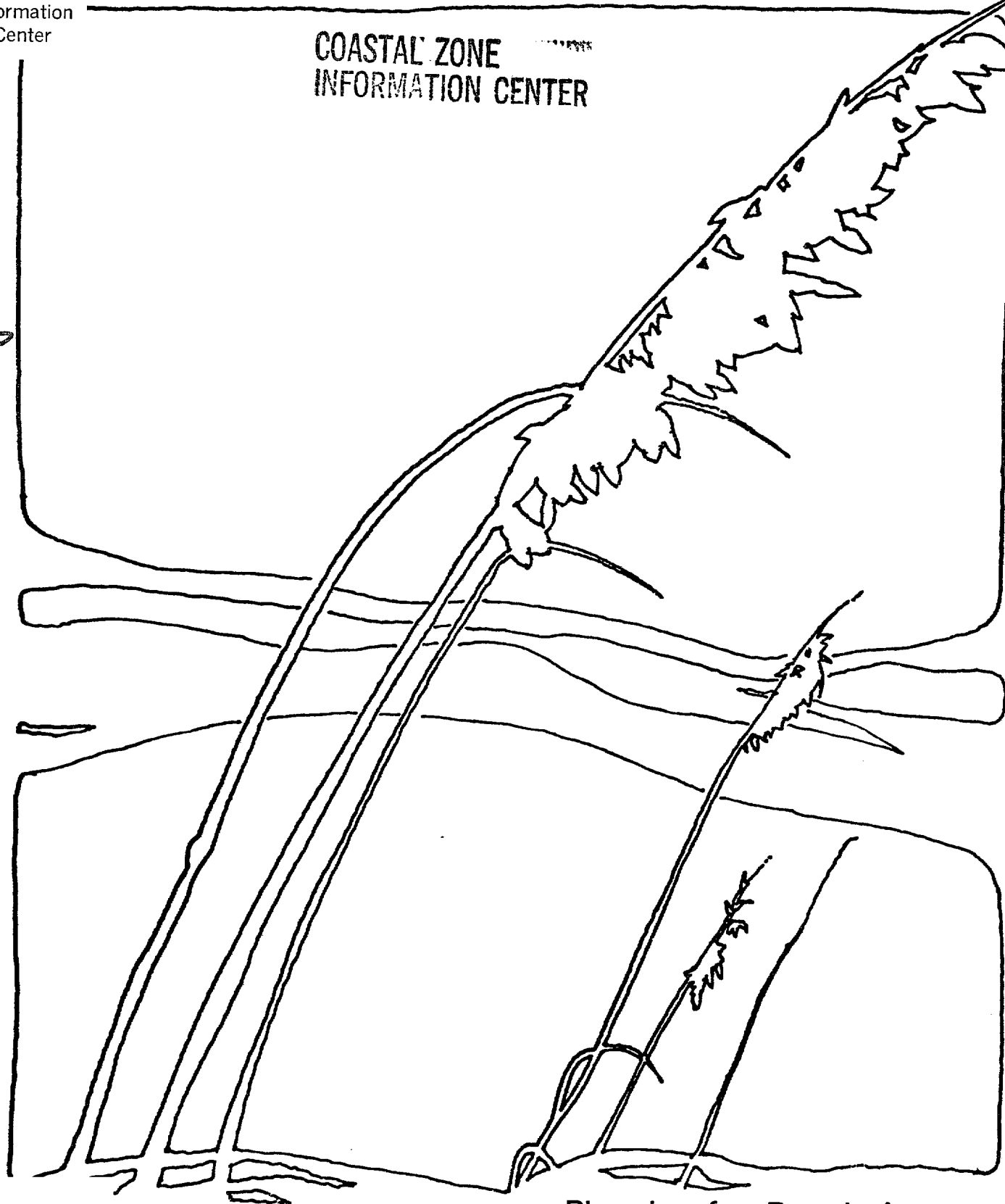


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Planning for Beach Access:

A Manual for Florida Local Governments

Joint Center for Environmental and Urban Problems

Florida Atlantic University and

Florida International University

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PLANNING FOR BEACH ACCESS:
A MANUAL FOR FLORIDA LOCAL GOVERNMENTS

Prepared by

William W. Dreyfoos

FAU-FIU Joint Center for Environmental and Urban Problems
1515 West Commercial Boulevard
Ft. Lauderdale, Florida 33309
(305) 776-1430

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This manual culminates a yearlong study of beach access in southeast Florida, funded by the Chastain Foundation. The following individuals made valuable contributions to the project:

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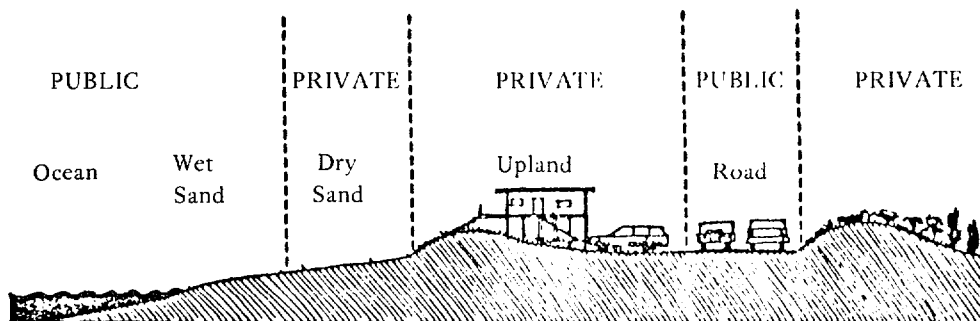
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CHAPTER ONE: OVERVIEW

What is beach access?

Simply put, beach access is the way people get to the beach. Refer to the following diagram of beachfront property:



Brower, *Access to the Nation's Beaches*, p. 61.

In Florida as in most states, the public owns the wet sand. Under a recent decision by the Florida Supreme Court, the public also may have the right to use the dry sand for recreational purposes. In other words, the public has the legal right to use what people normally call the beach. But using the beach and getting to it in the first place are two different things.

In most beach areas, the upland consists of a public road and one lot. This lot is usually called beachfront property. It is usually privately owned. When Joe Public crosses this private property to get from the public road to the public beach, he is trespassing. But for Joe Public to reach the water, he has to cross the upland someplace. How Joe Public manages to make this physical ingress and egress across the upland is the subject of this manual.

Why should we plan for beach access?

Joe Public has the right to use the beach. But if he is unable to cross the privately owned upland, he has no way to get there. Increasingly in Florida, the development of beachfront property has eliminated ways Joe Public has traditionally used to get to the beach. As a result, public recreation has effectively been barred from many expanses of public beach. Moreover, public beach recreation has increasingly been concentrated in smaller areas, such as state or municipal beach parks. As the public demand for beach recreation increases and the amount of access decreases, these areas become crowded, parking becomes a problem, and the quality of beach recreation available to the public declines.

Beach access planning is a governmental response to this decline in the quality and availability of beach recreation opportunities. It is based upon the willingness of government to take active steps to preserve and enhance the public's enjoyment of beach recreation. This manual focuses on ways that local governments can preserve and enhance the beach recreation opportunities available to the public.

What is beach access planning?

Beach access planning focuses on the public's legal (proprietary) rights to cross upland property to get to the beach. It has a number of different components:

1. Preservation of existing access
2. Making better use of existing access
3. Acquisition of new accessways
4. Acquisition of parking areas proximate to accessways
5. Development and maintenance of support services (e.g., police and lifeguards) and facilities (e.g., restrooms)
6. Improving public transportation systems to make beach access more accessible to more people, such as those lacking automobile transportation

The exact focus of any particular beach access planning program will depend on the local situation: what the local access problems are, and how these can best be addressed within the available financial resources. Each of these components may be relevant to a given access problem. The following simplified examples illustrate these six components, and the ways that a number of governments in southeast Florida have chosen to address their access problems.

1. Preservation of existing access: Sabal Point

Sabal Point is the tract of land abutting the Boca Raton inlet on the north. For years, beach users customarily used the property for parking and beach access purposes. The decision of the landowner to construct a hotel on the site engendered local response in the form of a lawsuit. Litigation is one tool that the public/local government can use to preserve existing public rights. In the Sabal Point case, there was a good case for a prescriptive easement in favor of the public; in other words, there was a good chance that the public had acquired rights to the Sabal Point property through years of continued public use (see Chapter 4, Tool # 5). However, in this case, the dispute continued for a number of years, and the resolution seems to be of ambiguous benefit to the public: some public rights are recognized, but access may be transferred to other properties; the hotel will be built; and the continuation of the prior public use on the Sabal Point property seems doubtful.

Preservation and perfection techniques can be important beach access tools. In North Carolina, for example, public easements to the beach have been preserved by such simple acts as the placing of signs and garbage receptacles. However, the Sabal Point example demonstrates that use of preservation techniques can also result in lengthy and costly disputes which drain governmental time and manpower that could be used in more productive ways. *Still, the applicability of preservation strategies provides a starting place for access planning: try to keep what you've got.*

2. Making better use of existing access: Hollywood

The city of Hollywood illustrates one of the classic beach access problems: access exists, but the access is inaccessible. The beach in Hollywood consists of one north-south road (A-1-A) and a large number of intersecting roads that dead-end at beachfront property. The rights-of-way for these streets continue down to the mean high tide line, meaning that there is public access at every block. However, this situation is deceptive, because there is almost no public parking along these streets. As a result, there is a lot of pedestrian access for those who live or vacation on the beach. But there is very little access for the 100,000 residents of the city who live across the bridges on the mainland, or for the tourists who stay on the mainland. Hollywood's problem is that it makes very poor use of its existing access, and can't afford to buy up beach land to build parking facilities.

An emerging solution to the problem in Hollywood is a shuttle bus system. Parking facilities are planned for the mainland, and shuttle buses will run from these terminals to the beach. This system should increase public beach recreational opportunities by making it easier for people to use Hollywood's existing accessways.

3. Acquisition of new accessways: Boca Raton, Martin County, Broward County

Acquisition has traditionally been the mainstay in the beach access planner's arsenal. Through a variety of techniques, outlined in later chapters, this approach is to acquire public easements or clear title to strips of upland property running from the beachfront road to the beach.

Acquisition can be used in a number of different ways. In the early 1970's, the Boca Raton beachfront was facing development in the form of condominiums. The city residents acted to preserve beach recreation opportunities by passing bond issues for the acquisition of beach parks. The result is a series of improved parks, adequate parking facilities, and high quality beach recreation.

In the early 1970's Martin County residents also reacted to the anticipated development of the beachfront. Through county and private efforts, money was raised to purchase 100 foot wide strips of upland at half mile intervals. This acquisition strategy was chosen to open up the greatest expanse of beach for the least amount of money, and to ensure that the county would qualify for beach renourishment subsidies from the U.S. Army Corps of Engineers. Currently, the access strips are mostly unimproved, but do provide pedestrian access and space for automobile parking.

Broward County has recently acquired some 10 foot wide strips of upland to provide pedestrian access to those who live or vacation several blocks away from the beach. These accessways are not served by parking facilities, and as a result function almost solely for the benefit of these near-beach residents/tourists. While these acquisitions have been criticized because they serve a limited public, it is important to realize that near-beach residents/tourists can become locked out of the beach by private beachfront development. The Broward County purchases recognize that there are different beach-using publics, with different user patterns and access needs.

4. Acquisition of parking areas proximate to accessways: Ft. Lauderdale

Given present beach user patterns, and the absence of a shuttle bus system, most resident day visitors and many tourists rely on automobile transportation to get to the beach. Their ability to use the beach accordingly depends on the availability of parking areas proximate to access areas. Four of Ft. Lauderdale's six miles of beachfront is public beach, served by diagonal parking along route A-1-A. Additional parking lots and metered facilities provide a large parking capacity. However, there still is not enough parking. On busy weekends, existing spaces are generally full by 10 a.m. After that time, cars of would-be beach goers cruise up and down A-1-A trying to find a place to park and adding to the congestion.

The beach at Ft. Lauderdale is readily accessible in terms of

ingress and egress. But there are insufficient parking spaces to meet the demand. A number of proposals, from both governmental and interest group sources, have been made regarding re-routing the beach highway and increasing the parking supply. This focus demonstrates that providing recreation opportunities can involve a variety of governmental functions not normally associated with recreation: in this case, transportation.

5. Developing and maintaining support facilities:

Ft. Lauderdale

Ft. Lauderdale's expansive public beach, and the large numbers of users it attracts, generates considerable costs for such services as police, lifeguards, and cleaning up the beach. While few communities will approach the magnitude of Ft. Lauderdale's service costs, local beach access planning should recognize that increased beach use also means increased service demands on local government.

Ft. Lauderdale's beachfront is instructive in terms of the availability of support facilities. The restroom and picnic facilities in Ft. Lauderdale are concentrated at the two beachfront parks, where an entrance (parking) fee is charged. Aside from these facilities, there are only two public restrooms serving almost four miles of beach. Obviously this supply is insufficient, but it does provide a lesson for local access planning. Restrooms, picnic facilities, playground equipment, and other support facilities can be located so that the users of these facilities help pay for their development and maintenance. In Ft. Lauderdale, the daily parking rate at Bahia Mar park is only \$1.00/day--even small amounts can help defray operating expenses. Support facilities do enhance the quality of beach recreation experiences, and Ft. Lauderdale has demonstrated that user fees can help with the cost of providing them.

6. Improving transportation systems: Hollywood,

Ft. Lauderdale

The earlier examples have shown that transportation systems can be the unexpected impediment to effective beach access. The heavy reliance on automobile transportation for beach recreation means that there have to be roads and parking areas available for beach users. Stated conversely, traffic congestion and inadequate parking facilities decrease the quality and availability of beach recreation.

In addition, a beach recreation system that relies totally on automobile transportation leaves those without automobile transportation out of the beach recreation picture. Particularly in Florida, with its large concentrations of elderly residents, the lack of public transportation to the beach can prevent

large segments of the population from satisfying their recreation needs.

Transportation-related improvements to facilitate beach recreation need not be prohibitively expensive. The shuttle bus system being proposed in Hollywood will be supported by user fees, and equipment costs can be amortized or shared with other units of government, such as a transit authority.

On the other hand, major transportation changes may be needed in some areas to reduce congestion and increase the availability and quality of beach recreation. In Ft. Lauderdale a combination of civic and governmental interests are attempting to plan the revitalization of the beach. Their preliminary proposals include the re-routing of the beach highway, doubling the parking capacity, and construction of a people mover system to transport people from the mainland to the beach. These improvements in the transportation system are major and costly ones. However, much of Ft. Lauderdale's economic vitality is tied to beach recreation. Ft. Lauderdale's civic and governmental interests may decide that the cost of these improvements is justified given the economic importance of quality beach recreation.

How does beach access planning get started?

The six components of beach access planning show that there are a number of different approaches that local communities can take to address their access problems. But how does beach access planning get started in the first place? The communities described thus far started their beach access planning in many different ways. Interested citizens started the acquisition efforts in Martin County. Citizens and local officials began the acquisition push in Boca Raton. Civic associations are spearheading the move to revitalize the Ft. Lauderdale beach. The city government in Hollywood is taking the lead in developing the shuttle bus system.

All of these efforts began because someone recognized a beach access problem--either an existing one, such as congestion; or an anticipated one, like the advent of beachfront condominiums. Local governments in Florida currently have an opportunity to address their beach recreation needs through the recreation element of the Local Government Comprehensive Plan, required in Section 163.3177(6)(d), Florida Statutes. And, as many governments in southeast Florida have demonstrated, special plans for beach access and beach recreation can be developed to supplement local recreation planning.

Once a local government has decided to begin planning for its beach recreation needs, what does it do? The following chapters set forth a suggested procedure for planning for beach access. This procedure is intended to be a general guide to Florida governments, and should reflect how any government in any jurisdiction might go about planning for beach access and quality beach recreation.

CHAPTER TWO: PLANNING METHODOLOGY

How does a local government go about addressing beach recreation concerns? Beach access planning can be done either as a discrete beach access planning effort, or as an element in a local government's comprehensive plan (e.g., the recreation element). The methodology outlined below will enable local governments to ascertain local access needs and to develop strategies for meeting these needs. It should be adaptable to the circumstances of any local government that chooses to address beach access issues.

The beach access planning process involves a number of simple and straightforward steps:

1. Getting your local government interested in beach access planning
2. Selecting a planning focus
3. Determining the scope of governmental commitment
4. Inventory
 - a. Inventory of existing access
 - b. Inventory of potential new access sites
5. Problem identification
6. Establishing priorities
7. Evaluating alternative access strategies
8. Selection of beach access acquisition and enhancement strategies
9. Development of local beach access program
10. Implementation of local beach access program

Each of these steps will be discussed in detail below.

Step One: Getting Your Local Government Interested in Beach Access Planning

A beach access planning program represents a local governmental commitment to increasing public recreation opportunities. This commitment involves the investment of manpower and time by many persons associated with the governmental unit. If Joe Public wants his government to begin beach access planning, how does he get the city or county commission, the planning department and the recreation department to make these commitments?

If Joe Public is an interested citizen, the standard array of citizen participation tools is available. Joe Public can talk to his elected officials, speak at public meetings, and let people know he thinks access planning should have high priority. He can go a step further and do some research on his own, to discover the exact nature of local access problems and the way these problems might be solved. He can share his ideas with civic and interest groups, and might consider forming a new interest group to promote beach access concerns.

All of these efforts involve salesmanship. The product being sold is beach access activism: that we have a beach access problem in our community, and we want to try to solve it. Some local officials may accept this message readily. Others may want to be shown in detail what the problems are, and

how they might be corrected. Joe Public must gear his advocacy to the local context. Once he has succeeded in getting the local officials interested in access, he has completed Step One. Step Two begins local government's involvement in beach access planning.

If Joe Public is an elected official or a member of the planning or recreation department, he has an opportunity to direct the activities of his office toward access concerns. In a beach community, access issues should be addressed in the daily activities of local government. In addition, the comprehensive plan must address access issues. Joe Public Employee may thus have the opportunity to research recreation problems and inventory available access as part of his job. And given his position within the government, Joe Public Employee may be in a particularly good position to influence local officials to begin beach access planning.

Step Two: Selecting a Planning Focus

A local government that decides to plan for beach access is starting from the premise that currently available access is now insufficient, or will become so in the future unless actions are taken to supplement existing access. To meet existing and future recreation needs, beach access planning must at the outset identify those problems that the planning effort is designed to solve.

Several South Florida examples illustrate the type of initial effort needed for effective beach access planning. Broward County's beachfront is highly developed, and intensively used for residential, tourist and public recreation purposes. Very little vacant land is left for public acquisition for beach access purposes. As a result, property acquisition for access purposes is likely to be expensive, perhaps prohibitively so. This does not mean, however, that beach access planning is futile for Broward County municipalities. An examination of existing public access and patterns of beach use indicates that there is a major transportation problem for many people attempting to use the existing access. Beach access planning in Broward County can focus on the transportation problem, and can also attempt to upgrade the quality of recreation associated with existing accessways.

A second focus for beach access planning is illustrated in Martin County. In the early 1970's much of the Martin County beachfront was undeveloped, but facing imminent development pressures. In deciding how to proceed with access acquisition, the county was guided by the U.S. Army Corps of Engineers' requirements for beach renourishment projects. Consistent with these requirements, the county acquired access strips at half-mile intervals along the beach. By so doing, the county both acquired accessways and insured eligibility for future renourishment projects.

These two examples illustrate the point that beach access

planning does not occur in a vacuum. Each local government planning for beach access does so within the context of existing land use, road networks, present and projected resident population characteristics, tourist demands, and existing public access. Each local government's approach to beach access planning will depend upon its own community characteristics. Local governments should begin beach access planning by articulating this approach as explicitly as possible—e.g., our planning focus is to develop beach parks, or to improve the parking situation, or to make beach recreation more accessible to tourists. The selection of this planning focus should be made with the maximum possible public input. Public input at this initial stage can assist local government both in issue identification and in assessment of political feasibility.

In terms of issue identification, public input can reveal unanticipated problems, or may show that access problems are only minor. For example, perceived access problems may not be actual ones. If some access areas are currently underutilized, public perception of overcrowded beaches may merely indicate insufficient knowledge of existing accessways. In this case, the community's beach access plan could emphasize low-cost strategies such as information dissemination and signs to mark public accessways. A supposedly major problem might thus be solved very easily.

In terms of political feasibility, early public input can reveal public preferences, indicate the level of public support for access expenditures, and generate political support for the implementation of the planning effort. Because each step of the process further locks the local government into one approach to meet access needs, this type of public input is most useful as early in the planning process as possible.

At the end of Step Two, local planners should have a focus for development of the beach access plan. This focus will provide a framework for the planning process. The details of the plan will be developed within this framework.

Step Three: Determining the Scope of Governmental Commitment

Another preliminary step in the beach access planning process involves estimating the levels of funding and manpower that will be available to develop and implement the access plan.

An effective beach access plan must be realistic. A plan may focus on an ambitious land acquisition program if it seems likely that bonds can be floated to pay for these purchases. On the other hand, if the funding sources appear limited, a grandiose planning effort may be useless in actually increasing the availability and quality of beach recreation opportunities. Similar attention should be paid to the maintenance costs of different access strategies, and to the capacity of local government to implement alternative access plans.

These initial steps reflect the fact that beach access planning is a specialized form of recreation planning, impacting

upon both land use and traffic circulation. An implementable beach access plan must take cognizance of this context, as well as the cost of maintaining the access acquired. In other words, there are realistic limits on how ambitious a community's access planning effort should be. These limits should be ascertained early in the planning process, and should be adhered to, for access planning to be effective.

Step Four: Inventory

A. Inventory of Existing Access

An inventory of existing beaches and their potential for public use is a necessary step in planning for better access. The inventory can determine (1) who owns the land, (2) what access rights exist or may be shown to exist, and (3) how suitable the beach is for recreational use. This section proposes an inventory methodology to make these determinations.

The proposed method involves two steps: (1) reference to county/city records for ownership and land use data, and (2) on-site surveys to confirm and expand recorded information and to assess recreational suitability and public use potential. Inventory information can be recorded on an Inventory-Assessment Form such as the one included in this section.

The inventory is based on city/county records such as tax maps, land deeds, subdivision plats, and land use maps. Tax maps give general ownership and locational information about lands, and are a useful first step in the research. The maps show the location of any land parcels that might give access to the beach or be used for public recreation. Each parcel of land delineated on the tax map is identified by its owner. The map will also give clues as to existing or possible future uses of the land. For example, large land holdings have a potential for future subdivision and thus suggest the use of subdivision regulations requiring accessway dedication. The map may disclose public lands that are not now used for recreation, but which might be incorporated into an access program. Lands in unknown ownership may have possibilities of becoming public land through legal proceedings. Lands within flood zones or near inlets or washovers have potential for public use even if they are in private ownership.

Ownership information indicated by tax maps must be confirmed by deeds or maps located in the County Registry of Deeds. Deeds are indexed according to the owner's name. Deed descriptions give locational information as well as information about use. The researcher can review a deed description to determine the exact boundaries of the land parcel, and particularly to see how far the land extends to the ocean. The deeds should also be read for any description of a public right in the property, such as the public dedication of an alleyway, or the purchase of an easement by the public. The Registry will also have recorded subdivision maps. These can be very helpful for clarifying deed descriptions of lot boundaries, and should also mark subdivision lands such as roads and alleyways that have been dedicated to the public.

Land use information may be available at the county or

municipal planning office. Information on public lands may be available in the form of maps of existing public parks, and highway and street maps. Existing facilities such as boat ramps, public beaches and marinas are sometimes mapped. Additionally, information on neighboring uses to an existing or potential public beach area will be helpful in assessing recreational suitability.

At the conclusion of this phase of the inventory, a great deal of information about existing ownership and access rights will be amassed. The second step is an on-site survey to validate this information, and assess suitability for recreational use.

Recreational suitability is in some measures a subjective assessment as well as an objective one. For this reason, a standard set of criteria to judge suitability is needed. The criteria must be consistent with the objectives of the beach access program. For example, if the objective is to provide more areas for boating activities, the assessment may include a great number of criteria to determine suitability for boating, and fewer criteria for scenic qualities or surfing potential. The assessment form included at the end of this section lists a number of factors that cover a representative range of

criteria. Some criteria, such as tenure, will have been determined from the first step in the inventory methodology. Others, such as shoreline vegetation, beach material and geomorphic characteristics may be determined from the on-site survey. The survey may also indicate adjacent land uses, for which private commercial recreational facilities might particularly be noted. Such facilities include, for example, piers, motels, or marinas. Environmental damage potential and potential maintenance problems may also be assessed on site.

Additional information collected in the on-site survey should include distance from parking facilities and the nature of the parking facilities (off-the-road parking, parking lots-fees, size). Apparent uses of land such as pathways extending from streets to the beach should be noted as indicating possible implied dedications or prescriptive easement. "No trespassing" signs, gates, and fences restricting access should also be included.

The methodology proposed here may be expanded or simplified according to the needs of the beach access program. This framework provides a way to assess ownership, access rights, and recreational suitability.

Inventory Assessment Form

Beach:

Island:

Inventory Factors	Ranking/Description
Beach Material	Sand (Coral, Algal) Gravel, Cobble, Rock, Pebble
Beach Texture	Fine Granular Rocky
Length	
Width	
Recreational Use	Swimming, Snorkeling, Scuba, Picnicking, Fishing, Boating
Shoreline Vegetation	
Geomorphic Characteristics	Embayed, Peninsular, Ridge
Seasonality/Stability	
Tenure	Private/Public/Disputed
Access Tenure	Public/Private-Open/Private-Restricted
Adjacent Land Use	
Parking Availability	
Development Intensity	High-Medium-Light-Natural
Development Type	Hotel-Condominium-Single-Industrial
Boat Ramp Potential	Yes No
Public Facilities	Toilets, Showers, Food, Recreational Rentals (Skindiving, Sailboats)
Waves/Currents	
Anchorage Potential	
Traditional Land Use	
Comments	
Other	

From: "The Virgin Islands Coastal Management Program and Draft Environmental Impact Statement,"
U.S. Department of Commerce (1977).

B. Inventory of Potential New Access Sites

The inventory of existing access gives a full picture of the current state of public access. However, this picture needs to be supplemented with information on the sites that may become available for expanding public access.

A number of criteria can be used in collecting information on potential access sites. The new site inventory can concentrate on vacant land, or parcels of beachfront land likely to be subdivided. Or, if the access plan is focused on meeting the Corps' beach renourishment requirements, active exploration of new access sites might be limited to properties roughly one half mile apart. Or, the inventory might catalog all existing municipal property as a prelude to developing strategies to trade municipal inland property for private beachfront property. Or, if the plan focus is to avoid new acquisitions, this part of the inventory might be omitted.

The inventory process is designed to determine where access exists, and where it might most easily and inexpensively be acquired. The focus chosen for the planning program will allow local planners to determine the kinds, locations and numbers of properties that need to be investigated for access potential. The inventory method is the same one outlined in the preceding section.

Step Five: Problem Identification

The inventory and the input used to establish a planning focus will produce a large amount of information concerning the present and anticipated future state of local access. Drawing upon this information, the planning staff must determine the exact nature of the community's existing and projected access problems. This is an evaluative step. Its product should be a list enumerating local access problems, and an analysis of how the problems arose and what specific steps might be taken to solve them. There are no cookbook guides to help planners make this analysis—this is the step in which information is sifted and professional judgements are made. However, it is always advisable to detail the basis for the conclusions drawn.

Once the planning staff has identified the local access problems, it is wise to refer back to Step Two, establishing the planning focus. Is this focus appropriate given the community's access problems? Should the planning process continue uninterrupted, or should the local government re-examine what it wants to accomplish in the beach access plan? These questions should be addressed at this point in the planning process, and mid-course corrections should be made before proceeding to the next step.

Step Six: Establishing Priorities

Once access problems have been identified and potential new access areas have been investigated, priorities must be established among access sites and strategies. Because this procedure essentially involves an allocation of scarce resources, the priorities selected will depend upon the amounts of money and manpower available. For example, if there is virtually no available money for beach access, the highest priorities might well go to strategies that preserve existing areas of access and

increase public awareness of these areas (e.g., by signs). Similarly, if considerable state and/or local monies are available, this step might include detailed analysis of alternative strategies (e.g., outright purchase as opposed to easements), and might assign priorities among specific sites utilizing a cost/benefit type of approach. The more specific the priorities are, the easier the final plan probably will be to implement. Public hearings may be appropriate at this stage of the planning process, either to help establish the priorities or to obtain feedback once the planning staff has done this.

Step Seven: Evaluating Alternative Access Strategies

The previous step determined which problems to address. This step explores the ways to address them.

Chapter Four outlines a number of different access acquisition strategies. The planning staff will want to examine these tools, options for improving the transportation system and improving maintenance, and any other reasonable-looking approach in addressing the priority problems. This analysis should be as detailed and as parcel-specific as possible. If acquisition is appropriate, the willingness of landowners to sell and the probable cost should both be estimated.

This is the step that tests the planners' skill: figuring out how best to accomplish the specific goals that have been set. Many alternatives should be considered, and in as much detail as possible. The most promising ones should be developed in a presentation format, to give elected officials and the public the clearest possible picture of what the access options really are.

Step Eight: Selection of Beach Access Acquisition and Enhancement Strategies

This is the step where decisions are made about what to do. In some localities, the planning department may customarily take the information generated in the preceding steps and determine what course of conduct should be followed. However, especially when the planning focus involves acquisitions, it is recommended that these decisions be made by the local governing authority.

The planning staff should present its findings and the alternatives available in as informative a context as possible. Beach access workshops for the public and local officials might be an effective way of disseminating information prior to the selection of strategies. The meetings at which strategies are selected should receive maximum publicity, and of course will be advertised and open to the public, as required by state law.

If successfully implemented, this step will result in two products. The first is a decision about what options the local government will pursue to increase and enhance beach access and beach recreation opportunities. The second is a broad-based local commitment to implementing these decisions. If the planning process has been conducted intelligently and well, the strategies selected for implementation will be reasonably easy to accomplish, affordable, and popular. In other words, the need for implementing these strategies will be apparent, and there will be citizen support and enthusiasm for carrying out the access program.

Step Nine: Development of the Local Beach Access Program

Once the access strategies have been selected, the planning staff must determine exactly how implementation is to occur. Much of this work should already have been done in the previous planning effort. However, at this point, the beach access planning program must be fully integrated into the functioning of the local government. Who will do what, when, and how must all be decided. This is an administrative step.

This step also involves an aspect of public affairs. Once the strategies have been chosen, it is useful to develop a program document that spells out what the problems are, how these will be solved and in what priority, and how the decisions about what to do were made. This document does not need to be lengthy, but should be of high quality. Its purpose is to define for elected officials and the public exactly what is involved in the beach access program. As program implementation proceeds, it may be a useful reference tool to help keep the implementation process on track.

Step Ten: Implementation of the Beach Access Program

This step involves doing those things necessary to accomplish the directives established through the planning program. At this point, the access program may shift departments: from the planning department to the parks and recreation department, for example.

It is important to realize that situations change, and the access program should be flexible enough to react to changed circumstances. One way of fostering flexibility is to make the planning process a continuing one. As the plan is implemented, the planning staff can monitor the effectiveness of current efforts. Periodically, the staff can report its findings, and make suggestions for ways to improve or expand the activities of the access program. Periodic citizen review may also be a workable idea, to ensure that the program is still supported by the public and to determine if the program should be expanded. If expansion is warranted, the process begins all over again, but this time with a more specific focus and with a better base of information.

CHAPTER THREE: ISSUES TO BE CONSIDERED

This manual focuses upon the perfection, preservation, and acquisition of access from public roads to the publicly owned areas of the beach. However, beach access planning must also address a number of closely related issues: How will the public be involved in beach access planning? What user-groups will be considered in the local access planning process? Once access has been obtained, what steps must be taken to maintain the accessways and the beach? What environmental impacts will result from increased beach use and what restrictions should be placed upon that use? Should highways or other means of transportation be provided or improved to encourage a larger portion of the public to use the beaches? How will parking requirements be satisfied? Should attempts be made to provide beach recreation to groups which have traditionally failed or been unable to utilize beach resources? The local planning effort should realize that these questions are implicit in the planning process. A number of these issues are discussed below. A successful program will need to deal with these problems in a forthright manner.

Public Participation in the Planning Process

The chapter on planning methodology contains a number of steps in which decisions must be made. This is particularly true of the first governmental step in the process: selecting a planning focus, and hence deciding which user groups will be emphasized in the access plan. It is important to solicit public input early, and frequently, in the beach access planning process. Public workshops and hearings can help local planners identify local access needs and deficiencies in the quality of beach recreation. If the public is led to believe that their input will actually be used in shaping and developing the local access plan, public participation early in the planning process can produce an enthusiastic constituency for plan development.

The converse also holds true: a beach access plan prepared in a vacuum may end up being a waste of time. Beach access planning must take into account the different needs of different user groups: tourists, resident day-visitors, residents lacking automobile transportation, economic interests related to beach use, etc. Efforts to discern existing and anticipated beach recreation problems for all such groups, and to keep the public informed of the progress of planning activities, can make the planning process easier and increase the chances for effective implementation.

Maintenance

After public rights in beach resources have been established, it is necessary to maintain the resources in a usable and attractive condition. Maintenance includes the provision of litter containers and "No Littering" signs, notification of beach use restrictions, enforcement and supervisory personnel, ground crews, lifeguards, first-aid attendants, and so on. Thus,

a crucial question arises: Where does the responsibility for maintenance lie?

Local governments are often reluctant to accept the maintenance burden, especially when many beach users live or vacation outside of the jurisdiction. It is important not to overlook alternatives to local financing of beach access programs such as agencies of the federal, state or county governments, regional governing bodies, and private park or recreation associations (to whom the responsibility might be contracted).

Beach access planning is primarily concerned with the access rights of the general public. However, the rights of owners of land adjacent to public beaches and accessways must be recognized and respected. Access planning should emphasize the containment of public uses and their incidental effects within the legal boundaries of accessways. Examples of measures which might be taken toward containment are the provisions of flexible wooden walkways over which the public is required to cross and the use of fences or vegetation to mark boundaries of public access. Such measures will require initial capital outlays and periodic maintenance.

Environmental Considerations

Beach access presupposes the existence of a beach. However, because the beach is inherently unstable, careless coastal management practices can destroy a beach and wreak havoc on inland areas. Governmental programs to increase beach use have a responsibility to act with sensitivity to the impacts of program activities. Beach access programs might thus prohibit off-road vehicles on the beach, proscribe use of groins, jetties, and other beach "stabilization" techniques, monitor the number of beach users to ensure that beach "carrying capacities" are not exceeded, and so forth.

The beach is surprisingly tolerant of picnickers, sunbathers, and fisherman, but the primary dune system (the first line of dunes along the coastline) cannot tolerate such users. When people walk on the dunes, they disturb the sea oats and other grasses and thereby destroy the plants which trapped the sand and created the dunes in the first place. The resultant dune destruction eliminates a natural barrier against the ocean and opens a pathway through which the waves of the next storm will crash. The sensitivity of the dunes is of particular importance to beach access planning because access to the beach cannot be obtained without crossing the primary dune (unless the dune has already been destroyed). Plans must include: measures forbidding the disturbance of dune grasses and designating points where flexible walkways or other dune preservation walks will be laid (the goal being zero alternation of the natural dune surface); monitoring of water usage to ensure the health of the dune vegetation; and careful design and construction of roads and public service lines to follow natural contours.

Transportation and Parking

Most beach access plans will encourage increased use. However, greater numbers of users place greater demands on the local transportation system. One obvious, though expensive, solution is to increase road capacity to reflect increased user demand. However, road expansion may not be the best solution. The reasons include parking limitations, air quality and noise implications, and the fact that new highways inevitably bring new development and may merely complicate existing problems.

One alternative is public transportation between beach areas and the origins of beach user trips. Responsibility for the funding of public transit might be placed upon the major traffic generators (tourist attractions, hotels, etc.) or on public transit authorities. Park and recreation agencies could share costs, and subsidies might be provided through gasoline taxes, license fees, and parking charges.

In the absence of public transportation, beach users are forced to compete for parking spaces. In some places parking space has become the limiting factor with respect to beach capacity: once a parking lot has been filled, the beach is "closed". Accordingly, increasing beach recreation opportunities often means increasing the parking supply. However, provision of additional parking facilities to meet existing or anticipated demand may not always be a satisfactory solution.

Parking facilities, like highways, encourage automobile traffic and the associated losses in environmental and social amenities. A second alternative to highway improvement is the use of shuttles or jitneys in conjunction with parking lots located adjacent to inland highway interchanges.

Equity

When we talk about providing more beach access along our coastlines, we are speaking implicitly about changing the equities of ownership patterns. A beach access program can be a method of distributing what has become a scarce resource to a greater portion and a greater diversity of the population.

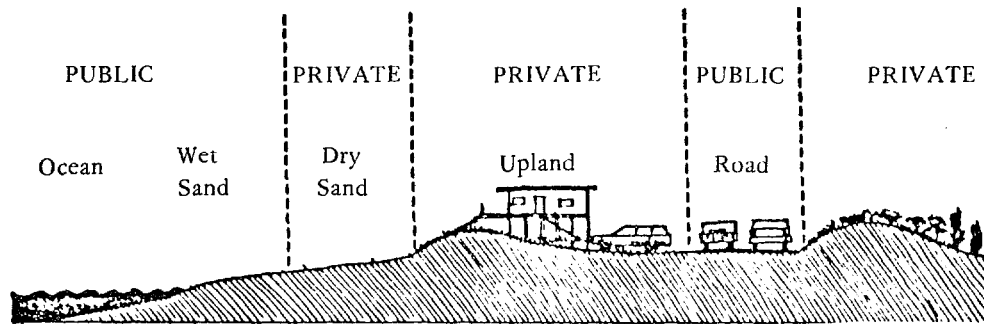
Perhaps the most inequitable situation exists where low and moderate income people live near the beach but are unable to enjoy beach recreation because private uses effectively fence the beach from public use. Opening up the beaches where persons live and work will ameliorate this situation. Beachfront parks in urban areas can provide the opportunity for a seaside experience for greater numbers and classes of persons. Providing parking facilities and public walkways to the beach will increase the beach clientele. An access program planned with all income groups in mind can distribute the benefits of the beach to a very broad group of users. In the absence of such a program, parts of the public may be foreclosed from enjoying beach recreation.

CHAPTER FOUR: LEGAL TOOLS FOR ACCESS ACQUISITION IN FLORIDA

Local governments have at their disposal a wide variety of techniques for acquiring beach access. By and large, these techniques are general property law tools applied to a beach access context. Accordingly, the consideration of these tools begins

with ownership patterns of beachfront property.

The diagram below illustrates the prevalent pattern of beachfront ownership in Florida.



Patterns of Beach Ownership

Access acquisition efforts can be defined with reference to this ownership pattern. The public has the right to use the road and the wet sand, and by judicial decision may have a right to use the dry sand for recreation purposes. But the public has no right to cross uplands to reach the public beach until this right is specifically acquired. Beach access acquisition involves gaining this right to cross the upland.

Acquisition Tools

Access to beaches can be acquired in a number of ways, including purchase, donation, establishment via litigation and application of land use control mechanisms. The various tools and techniques local governments can use to acquire access are presented in the following section. The descriptions and analyses quote heavily from the recent publication by Brower et al., *Access to the Nation's Beaches: Legal and Planning Perspectives*, UNC Sea Grant Publication UNC-SG-77-18, 1978.

There are a number of characteristics that inhere to all acquisition activities:

- * Access acquisition is generally expensive. As a result, governments should seek to acquire only the degree of ownership necessary for the type and quality of access desired. In many cases, this will mean acquiring less than fee simple ownership.
- * Acquisition of property is often a slow process for governmental agencies; and conversely, property suitable for access may be on the market for only a short period of time. Historically, private sector organizations (e.g., The Nature Conservancy) have assisted governments in making land acquisitions. These organizations can and should be used to help facilitate beach access acquisition.
- * Governmental access acquisition efforts will be most effective if they are based upon clearly established object-

ives. In other words, acquisition tools should be used to carry out the provisions of the beach access plan.

Most of the tools described below can be used by all Florida governments under the powers granted by Chapters 95, 125, 163, 166 and 177, Florida Statutes. Some of these tools are available only within certain limits, as established by statute or judicial decision. The list below only briefly describes the array of acquisition techniques available. Any governmental entity attempting to use these tools should conduct sufficient legal research to ensure that the specific application of the tool being contemplated is permissible under state law.

1. Perfection and Protection of Existing Title and Access

The first tool involves making the best use of existing access. In many communities, there may currently exist a number of access routes in which the public has or can easily acquire proprietary rights. Examples of such areas include rights-of-way leading down to the foreshore, which have been offered for dedication to the public but not yet accepted by the appropriate governmental body. A check of the titles of beachfront property may reveal similar instances in which the public can perfect title to accessways, or prevent public title from being abandoned.

Public access rights may often be preserved through adequate maintenance and management of the beach itself and the pathway which provides access. In some communities, access problems may be substantially alleviated by pursuing protection rather than acquisition policies. Measures such as governmental maintenance or placing signs generally will be less costly than outright acquisition, and easier to implement. Where this tool can be applied, it can quickly bring about increased public access to beach and ocean recreational resources.

2. Purchase of Fee Simple Title

Purchase of fee simple title is the most direct, and probably the most expensive, tool for acquiring access and beachfront public recreation areas. This tool involves the outright purchase of property in the open market. The acquisition strategy should define and limit configurations of property to be purchased. For example, small strips of land ten to fifteen feet wide, running from a public road down to the foreshore, can be purchased to provide pedestrian access. Larger tracts are necessary for beachfront parks, or parking facilities adjacent to accessways.

The fee simple purchase technique has the important attribute of flexibility. Its disadvantage, and often the fatal one, is that it is expensive. Several communities such as Boca Raton and Palm Beach County have financed beach and uplands acquisitions by means of public bond issues. In addition, funding for access acquisitions may be available from a variety of state and federal governmental sources, such as the Land and Water Conservation Fund (administered through the Florida Department of Natural Resources) and the federal Office of Coastal Zone Management. However, in the absence of bond-financing or outside funding, most local governments will need to employ techniques other than direct purchase in order to expand public access to any great extent.

3. Acquisition in Fee by Gift

a. Outright Donation

Outright donations of land for public purposes have long played an important role in public resource development. Outright donation is a highly desirable method of conveying property because of its relative simplicity and because it gives the entity entrusted with the land the flexibility to vary uses of the property to meet future needs and conditions. In addition, this tool is attractive because the donor may realize substantial tax savings from a donation of land.

The major conservation organizations—both national and regional—have historically given assistance to governments acquiring land by donations. All local governments are permitted to receive charitable donations of land from public-spirited citizens. 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.

When a landowner decides to donate his property to an organization or governmental agency, it is the landowner's prerogative to include restrictions in the deed of transfer. Such restrictions can ensure that the land will be managed and used according to the donor's wishes. The government must accept the conditions attached to the grant.

Donors who place restrictive language in the deed should be aware that the restrictions will most likely have an effect on the fair market value of the property. Through restrictions, the donor is effectively retaining some rights, and these rights have value; thus, the value of the restrictions

will be considered in any appraisal of the land.

One such restriction is commonly referred to as a "reverter" clause. By including a reverter clause in the instrument of transfer, the donor can specify that title to the land revert back to private ownership if the land ceases to be used for the purpose defined in the instrument.

b. Bargain Sale

If a landowner cannot simply give his land to an organization or government agency for protection, the alternative of purchasing the property at a bargain sale price should be explored. A bargain sale is a purchase price at less than the appraised estimate of fair market value.

A bargain sale is often a very attractive alternative to the landowner because of the potential tax savings involved. From government's perspective, a bargain sale provides the opportunity to acquire land it might otherwise not be able to afford. This tool gives both parties a good deal, and is highly recommended where large parcels are involved—for example, the State of Georgia recently purchased a barrier island using a bargain sale.

4. Purchase of Easements

Access does not require control of all proprietary rights in a parcel of land. Purchase of the right to pass over the property along a defined route in order to reach or leave the beach may often be enough. Such a route of ingress and egress is called an easement. Easements may be acquired in the same manner that property is acquired in fee. Depending upon the location, access easement may cost considerably less than fee simple title.

The technique of accumulating access easements is likely to be the best use of a locality's acquisition funds. However, most easements must be coupled with adequate parking facilities to provide true public access.

In addition, as with purchase of fee simple title, purchase of access easements requires a willing seller. 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. However, the difficulties involved in finding willing sellers may make fee simple purchase or donation more attractive acquisition tools.

5. Prescriptive Easement

Prescription refers to the process by which one person, or group of people, obtains the right to use another's land in some specific manner. Title remains with the original landholder, but is encumbered by the easement, or right to use, that has accrued to the party asserting the easement.

In many beachfront communities, the public has regularly used certain paths to reach the beach. If such public use satisfies the requirements for prescription, then the public has

acquired a right to use that particular accessway.

In Florida, the requirements for a prescriptive easement were set forth in *Downing v. Bird*, 100 So.2d 57 (Fla. 1958). To establish a prescriptive easement, the claimant's use must be:

- (1) Actual, continuous and uninterrupted
- (2) For the prescribed period of time (20 years)
- (3) Adverse under claim of right
- (4) With knowledge of the owner or so open, notorious and adverse that knowledge could be imputed to the owner
- (5) Inconsistent with the owner's use and enjoyment of his lands, such that the owner has a right to legal action, such as trespass or ejectment, to stop the unpermitted use by the claimant.

The leading Florida case regarding prescription in a beach access context is *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73 (Fla. 1974). Local governments contemplating litigation to establish a prescriptive easement should pay close attention to this opinion.

While many accessways may be legally obtainable for public use by means of prescription, most such routes have not been legally established. To be legally recognized, easement by prescription must generally be established through litigation. Litigation does involve some cost. As a result, de facto access may be preferable to the expense of securing legally recognized access.

6. Leaseholds

Many owners of beachfront property are unwilling to sell their land, but may be amenable to leasing all or part of the property. Local governments can use leases to provide for immediate access needs while long-range plans are being implemented. In addition, two variations on the standard lease can give local government time to decide whether to purchase a particular parcel and to accumulate enough money to do so. The first, a renewal clause in the lease contract, can give the local government the option to renew the lease at the time it expires. The second variation, known as the option to purchase clause, allows the government to purchase the property in fee prior to or at the expiration of the lease. This mechanism was used by the City of Boca Raton to acquire a portion of Spanish River Park. A related clause can give the local government the right of first refusal if the landowner decides to sell.

An important characteristic of leases is duration. One Martin County access lease runs for 99 years, thereby providing all the short- and mid-term advantages of a bargain sale. Most access leases will be of shorter duration, e.g., while land is being held for investment purposes. Other characteristics of leases include:

ADVANTAGES

- * Flexible as to duration and terms.
- * Usually less expensive than purchase of fee interest.
- * Basic ownership remains with property owner.
- * Lessor may be exculpated from personal and property losses to those using the land for recreation.
- * Lease is generally accepted and understood by the public and the courts.
- * Lessor retains future right to full use of property.
- * Public entry and use can be limited to specified months and purposes—permits some continued use by lessor during other times.
- * Contractual nature of agreement helps to identify more clearly the maintenance/enforcement roles.
- * Might be a partial solution where no other solution is possible.

DISADVANTAGES

- * Lessor and lessee may not always be able to agree on duration of lease or interests to be included therein.
- * Leasing rates are adversely affected by development pressures.
- * Lease may not necessarily reduce the owner's tax liability.
- * Responsibility for personal and property damage liability may be unclear.
- * May not solve long-run access problems.
- * Lessor retains future right to full use of property.
- * Might unfairly raise public expectations if leasing is used to the exclusion of other acquisition strategies.

7. Eminent Domain

Eminent domain is the process by which governmental entities use condemnation to acquire proprietary interests in privately held land in exchange for compensation. Local governments are authorized to condemn whatever land they choose, so long as their actions are consistent with a public use or benefit involving the land in question. Compensation is fixed at fair market value, though there may be some evidentiary problems in establishing exactly what this is. When government has the money to purchase property, eminent domain is the method of forcing the landowner to sell.

Eminent domain is expensive. In addition, the forced sale character of eminent domain can create political problems. This tool may not be a realistic approach to acquiring public rights in scarce beach land. However, this tool may be useful in acquiring accessways the public currently uses but does not own. Although some litigation may be expected contesting both valuation and the location of accessways chosen, this use of eminent domain presents a comparatively effective method of securing access if the financial resources are available.

8. Dedication

Many recent coastal real estate developments have included roads or rights-of-way which run perpendicular to the ocean. Frequently, these roads are expressly dedicated to the appropriate local government. In other instances an offer of public dedication is implied. Where dedication is express, the local government and hence the public has acquired the right to use the road or right-of-way. Where there has been only an offer to dedicate, the local government must accept the dedication either by an express acceptance or by an activity such as maintaining the road.

Where roads or rights-of-way continue down to the foreshore, as they do in many areas, a large number of accessways can be and may have already been obtained without public cost through dedication.

Dedication is most effective as a requirement for subdivision platting. This technique is included in the discussion of land use tools.

9. Trades

There are two principal means by which trading can be used to acquire access. The first involves the exchange of access rights for something of value to the landowner—e.g., easing zoning or building permit restrictions, or assuming maintenance responsibilities for beachfront property.

The other use of trading involves the exchange of land. If a local government owns non-beachfront property for which it has no immediate or foreseeable need, such property could be exchanged for beachfront property having similar value.

The federal government has often traded land in order to obtain a larger, unified parcel where it had previously held title to scattered pieces of land. This has enabled the government to establish parks and parkways which it could not otherwise have done as effectively or efficiently. This strategy may also be applicable at the local level.

10. Land Use Controls

Land use controls, principally zoning ordinances and subdivision control ordinances, can be used in the development process to provide public access. A large number of land use control techniques could be, but have never been, used in beach access acquisition. Some litigation may arise as these techniques are applied to the beach context. Aside from the cost of potential litigation, however, land use controls constitute an array of tools which do not require the expenditure of money by local governments. Accordingly, they are among the primary implementation mechanisms for a beach access planning program.

A. Required Access. This simply requires that public access be provided as part of any beachfront development. The

easiest method of requiring access is through a city or county zoning or subdivision control ordinance such as the one presented in Chapter Five. Beachfront property can be zoned as recreational/residential or recreational/commercial, with the access provision being one of the requirements of the zone. Required access may also be achieved through use of subdivision control ordinances.

B. Required Dedication of Roads Providing Access. This requirement provides that roads or rights-of-way be extended to the foreshore and that these roads or rights-of-way be dedicated to the public. Three distinct requirements are usually a part of any application of this tool:

- (1) The extension of all roads and rights-of-way down to the foreshore
- (2) Public dedication of all such roads and rights-of-way
- (3) Required public dedication of all other roadways in beachfront subdivisions

The purpose of this tool is to provide vehicular access either to the foreshore itself or to a point very near the foreshore, with pedestrian access across the dedicated right-of-way down to the foreshore. Although this tool is most applicable to new subdivision contexts, it might also be appropriate in commercial situations where roads or rights-of-way can be extended down to the foreshore. Implementation can be approached either through zoning ordinances or subdivision control ordinances, but zoning ordinances will provide a stronger legal basis for requiring particular road patterns and their dedication to the public.

C. Required Dedication of Access Lots. As a general rule, a governmental body cannot require the dedication of a subdivision lot to public use without paying for it. However, in beachfront developments there is an approach that would require the dedication of lots for access purposes with nominal or no governmental expenditure required. The subdivision control ordinance can require that any beachfront subdivision containing interior lots (without beach frontage) include platted lots to be used for access to the beach by the interior lot owners. This device, called water access lots, has been used in North Carolina. In the North Carolina application, the access lots may either be dedicated to the public or transferred in fee jointly to all interior lot owners. Lots dedicated to the public obviously provide the desired public accessway to the beach. If the access lots are instead transferred in fee to the interior lot owners the local government may use eminent domain to acquire public access.

CHAPTER FIVE: MODEL BEACH ACCESS ORDINANCE

The following ordinance is intended to serve as a guide to local governments that wish to operationalize their beach access planning efforts. It was developed from an ordinance proposed by Dean Frank Maloney and associates,* with the assistance of Dean Maloney, the Eastern Water Law Center, and students at the Holland Law Center, University of Florida. Any local ordinance should be reworked and tailored to the particular needs of the local community. This model ordinance follows a program approach that heavily stresses mandatory land dedication as part of the development process. Communities using this model ordinance should recognize that the constitutionality of dedication requirements will vary from state to state. As a result, legal counsel should be sought prior to the adoption of any local ordinance following this model.

Model Public Beach Access Ordinance

Section One: Short Title

This ordinance shall be known as the Public Beach Access Ordinance.

Section Two: Findings of Fact and Objectives

2.1 Findings of Fact

- (a) The public beaches are lands held in trust for the people.
- (b) The citizens of the state have the rightful use of such public beaches.
- (c) The citizens of [local unit] maintain and support the public beaches.
- (d) The [governing body] deems it essential for the promotion, protection and improvement of the public health, safety, comfort, good order, convenience and general welfare that all citizens have reasonable access to and use of such public beaches.
- (e) Development of coastal areas by private landowners frequently increases demand for recreational areas, restricts access to public beaches, and adds to the cost of acquiring public accessways.

2.2 Objectives

In order to secure for the public access to and enjoyment of the natural resource amenities of the beaches of [local unit], and to protect and develop beach resources for the greatest benefit of all citizens, it is hereby declared to be the legislative intent of this

ordinance to provide for the planned and orderly development of coastal lands so as to ensure the provision and maintenance of public beaches and public accessways and the preservation and use of public beach rights which have arisen through prescription, custom, dedication or otherwise.

Section Three: Definitions

Unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

- (a) "Beaches" are all coastal sandy areas along the Gulf of Mexico or Atlantic Ocean, including wet sand, dry sand and immediate upland areas.
- (b) "Coastal Lands" as used in this ordinance shall mean those lands adjacent to the Gulf of Mexico or Atlantic Ocean, including beaches and their immediate uplands, and designated in the Beach Access Plan as subject to regulation under this ordinance.
- (c) "Public Accessways" are lands over which the public has a right of traverse to reach public beaches.
- (d) "Public Beach" shall mean any beach which has been dedicated to the public or in which the public has acquired a right of use by easement, prescription, custom, government ownership, or any other act, law or instrument.
- (e) "Subdivision" shall mean the division of a parcel of land, whether improved or unimproved, into three or more lots or parcels of land for the purpose, immediate or future, of transfer of ownership. For purposes of this ordinance, the term "subdivision" shall include condominium development.
- (f) "Support Facilities" shall mean shelters, equipment, restrooms, parking areas and other facilities necessary for the safe, healthful and convenient use and enjoyment of public beaches.
- (g) "Uplands" as used in this ordinance shall mean those lands lying between the vegetation line or other landward demarcation of the dry sand, and [a public road or highway]

Section Four: Public Beach Planning and Administration

The [governing body] shall have primary responsibility for administration of this ordinance.

4.1 Powers and Duties.

The [local planning agency] shall prepare and make recommendations to the [governing body] regarding the adoption of a Beach Access Plan which

*Maloney, Fernandez, Parrish and Reinders, "Public Beach Access: A Guaranteed Place To Spread Your Towel," 29 *University of Florida Law Review* 853 (1977).

will provide regular and frequent public beaches and public accessways capable of meeting present and foreseeable public recreational needs. In developing the Beach Access Plan, the [local planning agency] should consider, among other factors:

- (a) The location and extent of areas to which the public has acquired rights of use or traverse through prescription, custom, dedication or otherwise, and the possibilities for regulation, relocation, expansion and improvement of such areas where desirable.
- (b) The types and location of lands to be acquired through mandatory dedication under Section Five of this ordinance.
- (c) Areas appropriate for acquisition through purchase and exercise of eminent domain.
- (d) Methods for increasing public use of existing public access ways.
- (e) The location of environmentally sensitive areas requiring special protection.
- (f) The availability of and optimal location for parking facilities.
- (g) The desirability and cost of providing support services and facilities, such as lifeguards and restroom facilities.
- (h) Improvements in the local transportation system that might increase the availability or quality of beach recreation.
- (i) Methods for obtaining funding for implementing elements of the Beach Access Plan (from federal, state, regional, local and private sources), including the desirability and availability of user fees.

4.2 Beach Access Map

To the extent feasible or practical, the [local planning agency] shall present its findings, conclusions and proposals in the form of a Beach Access Map available to the general public. The map should designate, along with other relevant data, the location and extent of public beaches, public accessways, environmentally sensitive areas, coastal lands subject to future development under the mandatory dedication requirements of this ordinance, areas of contemplated public purchase, and the nature and location of support facilities.

4.3 Procedures

(a) General Rules

The [local planning agency] and [governing body] shall follow all applicable rules of procedure required by state and local law.

(b) Public Participation

In addition to the requirements of state and local law, the [local planning agency] shall establish procedures for providing maximum, effective public

participation in the preparation, adoption and implementation of the Beach Access Plan. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public hearings, information services, and consideration of and response to public comments.

(c) Assessment and Evaluation of the Beach Access Plan

The planning program shall be a continuous process. The [planning agency] shall prepare periodic reports at least once every five years and at lesser intervals as required by the [governing body]

The report shall compare plan objectives and actual results, evaluate social and economic effects, assess unforeseen problems and opportunities, and may suggest changes in the Beach Access Plan.

In some jurisdictions the following alternative provisions for a beach access advisory commission may be utilized:

4.4 Establishment of a Beach Access Advisory Commission. (Alternative)

(a) The [governing body] shall establish a Public Beach Access Commission and appoint members thereto.

(b) Terms of Office; Removal from Office; Vacancies

Members of the commission shall be appointed for staggered terms of such length as may be determined by the [governing body] and shall serve until their successors are appointed. Original appointment may be made for a lesser number of years so that the terms of the said members shall be staggered. The

[governing body] may remove any member of the commission for cause after written notice and public hearing. Any vacancy occurring during the unexpired term of office of any member shall be filled by the [governing body] for the remainder of the term. Such vacancy shall be filled within thirty (30) days after the vacancy occurs.

(c) Officers, Rules of Procedure, Consultants and Advisors

(1) The commission shall elect a chairman and a vice-chairman from among its members.

(2) The commission shall meet at regular intervals and at such other times as the chairman or commission may determine. It shall adopt rules for the transaction of its business and keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

(3) The commission may, subject to the approval of the [governing body], employ such experts, technicians, and staff as may be deemed proper and pay their salaries, contractual charges and fees, and such other expenses as are necessary to conduct the work of the commission.

Section Five: Dedication of Land

5.1 Dedication Requirements for Plat and Building Permit Approval *

As a condition for obtaining approval for subdivision platting or the issuance of a building permit on coastal lands, as defined in this ordinance, the subdivider or applicant shall dedicate land, or a fee in lieu thereof, to the public to provide for public beaches, public accessways and support facilities. The amount of the dedication shall be a _____ foot wide strip of land, running the breadth of the property and abutting a public road, for each _____ feet of beach frontage. In lieu payments shall be in the amount of the value of such a strip on the property in question. In lieu payments will be expended in a manner designed as much as practicable to benefit the general area of the subdivision or building in question

5.2 Method of Providing Land

Land for public beaches and public accessways may be provided by deed, easement, dedication or any other method which guarantees public use in perpetuity. An offer to dedicate that meets the requirements of this section shall be accepted by the [governing body] .

5.3 Waiver of Requirements

The [local planning agency] may develop standards for determining situations in which the dedication requirement of this section may be waived or amended. The [governing body] must approve these standards before they become effective. Once these standards have been approved, any person attempting to secure plat or building permit approval may request the [local planning agency] to issue an opinion as to whether the application in question meets the waiver standards. Final determination of waiver, amendment or compliance with this section shall be made by the [governing body] .

**Again, note the caveat that the constitutionality of dedication requirements will vary from state to state. See the discussion in Maloney et al., 29 U. Fla. L. Rev. 853, 867 et seq. regarding the validity of different kinds of dedication requirements.*

Section Six: Operation of Public Beaches and Public Accessways

6.1 Maintenance

The [recreation dept.] shall have the duty and responsibility to maintain and promote the condition of all public beaches, public accessways and support facilities affected by the provisions of this ordinance.

6.2 Signs

The [recreation dept.] shall provide signs or other markings to indicate the location and extent of public beaches, public accessways and support facilities.

6.3 Charging of Fees

The [recreation dept.] may impose reasonable fees for the use of public beaches or parking facilities acquired through application of this ordinance.

Section Seven: Obstruction of Public Beaches and Public Accessways

No person, firm, corporation, association, or other legal entity shall create, erect, or construct any obstruction, barrier or restraint which is inconsistent with or interferes with the exercise of any public rights, except as otherwise authorized by the [governing body] . Violation of this provision shall constitute a misdemeanor punishable by fine of not more than \$ _____ , and removal of the obstruction.

Section Eight: Interpretation

This ordinance is intended to increase the availability of public beaches and public accessways, and nothing in this ordinance shall be construed so as to diminish or restrict public beach rights and privileges which exist or may come into existence in any other manner.

Section Nine: Severability

It is the intention of the [governing body] that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the [governing body] that if any provisions of this ordinance be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

Section Ten: Effective Date

This ordinance shall become effective _____ , 19__.

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3. Legal Periodicals

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*Material focuses on Florida

4. CASES

The following cases illustrate various judicial treatments of beach access and access-related issues.

The user should note that a large number of additional land use and property law opinions will be relevant to any particular access acquisition strategy. The user is thus cautioned that the following cases illustrate judicial thought on *only some* of the issues involved in access acquisition, and should in no way be construed as a complete or definitive listing of relevant judicial material for any particular access problem.

Given this caveat, the following cases may provide useful guidance for communities embarking on a beach access acquisition program.

FLORIDA

Admiral Development Corp. v. City of Maitland, 267 So. 2d 860 (Fla. 4th D.C.A. 1972). Required dedication of land.

Broward County v. Janis Development Corp. 311 So. 2d 371 (Fla. 4th D.C.A. 1975). Conditioning building permit approval on dedication.

City of Daytona Beach v. Tona-Roma, Inc., 294 So. 2d 73 (Fla. 1974). Prescription and public rights in a beach access context. This is the leading Florida case on beach access.

Downing v. Bird, 100 So. 2d 57 (Fla. 1958). Rules for prescription.

Miami Beach v. Miami Development Co., 14 So. 2d 172 (Fla. 1943). Implied intent in dedication.

Miller v. Bay-to-Gulf, Inc., 193 So. 425 (Fla. 1940). Requisites for dedication.

Trustees of the Internal Improvement Fund v. Ocean Hotels, Inc., 40 Fla. Supp. 26 (15th Cir. Ct. 1974). Private rights re: beach construction.

Wald Corp. v. Metropolitan Dade County, 338 So. 2d 863 (Fla. 3d D.C.A. 1976). Scope of the police power re: subdivision dedications.

White v. Hughes, 190 So. 446 (Fla. 1939). Scope of public trust doctrine.

OTHER JURISDICTIONS

Associated Home Builders v. City of Walnut Creek, 4 Cal. 3d 633, 484 P. 2d 606 (1971), appeal dismissed 404 U. S. 878 (1972). Scope of mandatory dedication (California).

Borax Consolidated Ltd. v. City of Los Angeles, 296 U. S. 10 (1935). Established the mean high tide line as the landward boundary of the wet sand.

Borough of Neptune City v. Borough of Avon-by-the-Sea, 61 N. J. 296, 294 A.2d 24 (1972). Higher non-resident fees for use of public beach invalidated under the public trust doctrine.

Gerwitz v. City of Long Beach, 69 Misc. 2d 763, 330 N. Y. S. 2d 495 (Sup. Ct. 1972), *aff'd mem.* 358 N. Y. S. 2d 957 (App. Div. 1974). Invalidates restricted use of municipal beach to municipal residents.

Gion v. City of Santa Cruz, Dietz v. King, 2 Cal. 3d 29, 84 Cal. Rptr. 162, 465 P. 2d 50 (1970) (en banc). Established new rules for implied dedication/prescription, applicable in California.

Hughes v. Washington, 389 U. S. 290 (1967), reversing Hughes v. State, 410 P.2d 20 (1966). Re: seaward boundary of private property.

Illinois Central R.R. v. Illinois, 146 U. S. 387 (1892). U. S. Supreme Court definition of the public trust doctrine.

Just v. Marinette County, 201 N. W. 2d 761 (Wis. 1972). Scope of public and private rights in natural resources.

Marks v. Whitney, 6 Cal. 3d 251, 491 P.2d 374 (1971). Expansive interpretation of the public trust doctrine.

Martin v. Waddell, 41 U. S. 367 (1842). Initial U. S. Supreme Court statement of the public trust doctrine.

Seaway Co. v. Attorney General, 375 S. W. 2d 923 (Tex. Civ. App. 1964). Dry sand subject to a public use easement, pursuant to Texas Open Beaches statute.

State ex rel. Thornton v. Hay, 254 Ore. 584, 462 P.2d 671 (1969). Public rights in the dry sand established through customary use.