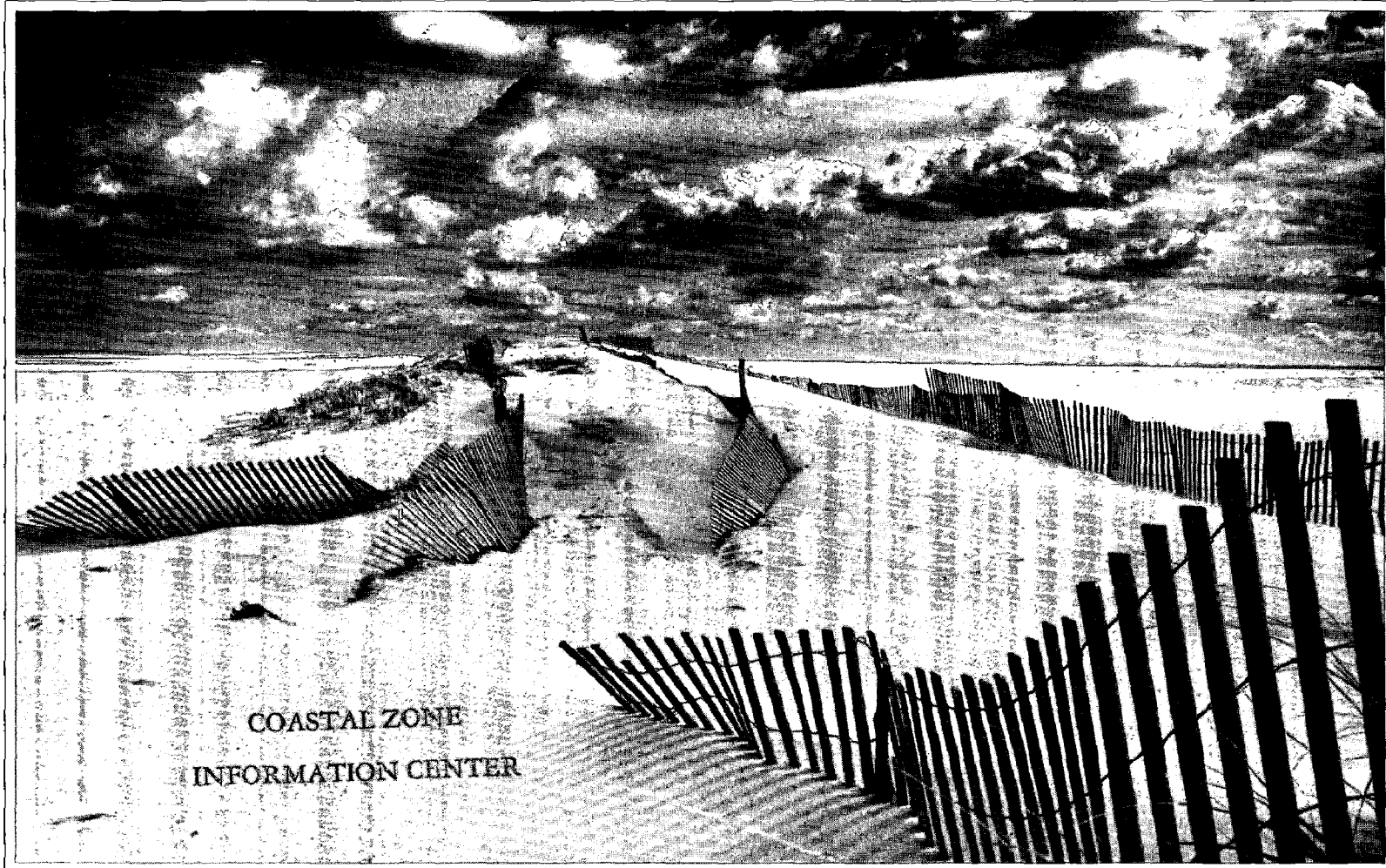
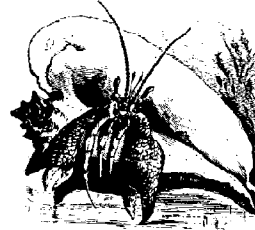


# The Way to the Sea



Methods for Massachusetts Communities to Provide Public Access to the Coast

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Methods for Massachusetts Communities to Provide  
Public Access to the Coast

COASTAL ZONE  
INFORMATION CENTER

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Getting There: A Recreational Guide to the South  
Shore Waterfront, Hingham to Plymouth (1981)  
The Boston Harbor Access Guide (1984)



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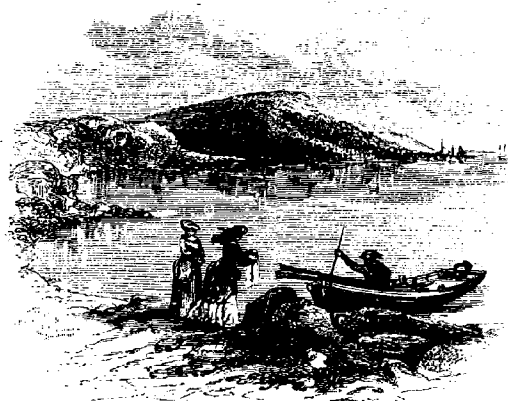
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For the gifts of life are the earth's and they are  
given to all, and they are the songs of the birds at  
daybreak, Orion and the Bear, and the dawn  
seen over the ocean from the beach.

— Henry Beston  
*The Outermost House*  
New York: The Viking  
Press, p. 222, (1956)

# I. INTRODUCTION

## The Need for Public Access to the Coast

The thin margin where land meets sea has long been a valuable resource to the people of the Bay State, 75% of whom live within a half hour's drive to the shore. As our relationship to the sea evolves, economic dependence upon maritime activities has been joined by a new reliance on the shoreline for recreation and tourism. People in ever greater numbers turn to the sea's edge for a multitude of reasons. Active recreation—swimming, fishing, and boating—is complemented by more passive forms, such as strolling along the water, or gazing at waves and gulls. Visual access to the sea has taken on a new importance, as residents and visitors appreciate how the sweep of open water refreshes the eye and spirit, providing a welcome break from the rigors of our increasingly complex world.



## Shortage of Coastal Open Space

Yet as the demand for shoreline recreation grows, the supply of space available for public use dwindles. On Cape Cod, where 10 homes are built each day, a resident recently observed, "They're not making any more beach." In a state with over 1500 miles of tidal shoreline, only 235 miles are open to the public. Growth rates in coastal towns such as Barnstable are the highest in the state, sending waterfront property prices beyond the budgets of municipalities. In Hyannis, for example, a single acre of property with an ocean view commanded a price of \$200,000 in the summer of 1984. The problem of escalating prices for beachfront property is further compounded by municipal fiscal austerity resulting from recent property tax limits. To provide more coastal land for public use, more and more towns seek cost-effective alternatives to purchase shoreline property on the open market.

## Beach Traffic Congestion

The shortage of public access to coastal land for recreational use takes several forms. Massachusetts is graced with an abundance of beautiful sandy beach, but most of it is far from the majority of the state's population. Although 65% of the state's population live north of Duxbury, 75% of the public beaches lie to the south of Duxbury. On any hot summer weekend, the demand for an attractive sandy beach within two hours of Boston is likely to exceed the supply. The crowded Boston beaches prompt those with transportation to travel to other beaches on the North or South Shores, or on to Cape Cod. Many beach parking lots fill up before 10:00 A.M., effectively excluding those who live beyond a certain distance, or whose leisure time comes later in the day.

## Parking Problems

Where beaches exist, parking is sure to be in short supply during peak use periods. Public beaches designated as "public parks" may not charge discriminatory beach entrance fees for non-residents. Still, it is not uncommon to find daily beach parking fees for non-residents which exceed the *annual* parking fee for residents, or to have strict quotas on the number of out-of-town cars. Parking fees, like waterfront property prices, have risen dramatically in recent years. Twenty years ago, no Cape Cod beach community required parking fees. Now, the great majority charge daily or weekly visitor parking fees.

## Restrictions on Informal Beach Access

Access becomes further restricted by a growing reluctance of littoral property owners to permit informal access to their beaches. This causes conflicts in coastal communities where beach access was taken for granted by local residents. Rapid growth and soaring



beachfront property values make private beaches more desirable, and induce owners to post "No Trespassing" signs with increasing frequency, and in some places hire guards as enforcers. In most cases, the public beach may not easily accommodate those who had customarily used private property for recreation, but are now prevented from doing so by increasingly restrictive property owners.

### Conflicts Over Kinds of Access

A further problem concerns conflicts between forms of coastal access. Some beach property owners have attempted to prevent local fishermen from using recorded town ways to water, citing the risks which such activity poses to children who play on the adjacent sand beach. Swimmers often compete with windsurfers for control of sections of the beach. In certain harbors, lobstermen face the ire of new waterfront residents who object to the odor and noise of a working waterfront. And in some coastal areas, unlimited public access may threaten fragile ecosystems or accelerate damaging erosion.

### Access to Urban Waterfronts

Public demand for access to the coast has grown in recent years beyond beaches and boat ramps to include visual and pedestrian access to municipal waterfronts. As a result of its historic settlement patterns and maritime past, the Bay State features over forty urban waterfronts. Each offers opportunities for public access to the sea. Prompted in many cases by recent improvements in water quality, and spurred on by successful redevelopment of waterfronts as in Boston and in Salem, more and more coastal communities are taking a new look at their harbors and other coastal property, and seeing the special possibilities for public enjoyment which the shoreline provides. As communities rediscover their maritime heritage, many have begun to seek forms of waterfront development which feature water-dependent uses. Recent waterfront developments will protect existing public rights of way, and will provide open vistas to and walkways along the water.

## Public Access Policies of MCZM

In 1974 the Massachusetts Legislature commissioned a study of the availability and accessibility of public beaches. The resulting report declared the public access situation to be "a crisis." The awakening of public interest in increased public access to the coast found expression in the state policies of the Massachusetts Coastal Zone Management Plan. Providing public access to the coast is a key objective of these CZM policies, which emerged from close consultation with coastal community officials and residents:



Policy 13: Review developments proposed near existing public recreation sites in order to minimize their adverse impacts.

Policy 18: Encourage acquisition of undeveloped hazard prone areas for conservation or recreation use, and provide technical assistance for hazard area zoning and mitigation of erosion problems.

Policy 20: Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts, and expansion of visual access.

Policy 21: Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.

Policy 22: Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.

Policy 23: Provide technical assistance to developers of recreational facilities and sites that increase public access to the shoreline.

Policy 24: Expand existing recreational facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or where site availability is now limited. Assure that both transportation access and the recreational facilities are compatible with social and environment characteristics of surrounding communities.

In the summer of 1982, MCZM undertook a survey of Massachusetts residents to determine public perceptions and preferences on coastal issues, including public access. The survey found that 57% of Massachusetts residents favor conservation of remaining undeveloped coastline, while 26% favor recreational beach use of this land. Fully 77% of the statewide public favored requiring developers of large coastal properties to provide the general public with direct physical access to the waterfront and shoreline. Finally, 85% of the public favored state regulation of private construction and development along the waterfront to prevent blockage of scenic vistas.

## Leadership at the Local Level

Due to its unique history, Massachusetts is limited in what it can do at the state level to carry out the wishes of the public and increase public access to the coast. Ordinarily a leader in coastal issues (Massachusetts pioneered in wetlands protection, and its federally-approved CZM program was the first on the Atlantic coast), Massachusetts lags behind other coastal states in providing public access to its beaches. California, for example, amended its state constitution to make its beaches public in 1873. Oregon did likewise in a State Supreme Court ruling in 1969, while Texas opened up its coast to the public in 1959. New Jersey recently followed suit, when its Supreme Court recognized public recreational rights on the foreshore, and even on the dry sand above mean high tide:

"The complete pleasure of swimming must be accompanied by intermittent periods of rest and relaxation beyond the water's edge."

In addition, several states, particularly California, Oregon, Florida and Texas, have funded programs specifically to increase public access to the coast.

Massachusetts, on the other hand, joins only a handful of states in recognizing private ownership rights down to the low tide mark. Indeed, Massachusetts goes further, to the extreme low water mark. For this reason — plus the Commonwealth's strong tradition

of "home rule" — strategies to increase public access to the shore must originate at the local level.

## Summary

This handbook describes a number of steps communities can take to improve coastal public access. Some of these ideas are collaborative in nature, while others require an affirmative act by a person or group desiring to affect coastal access. These include protecting and perfecting existing accessways, acquiring public coastal land or easements to use private property, and encouraging waterfront development to provide public access. Case studies are provided to illustrate how these tools can be applied.

The following sections outline the origin and limits of public rights on the coast, and then describe how new regulatory tools, forms of land acquisition, and practical design and maintenance planning can — at a relatively low cost — help to increase public access to the Bay State coast.

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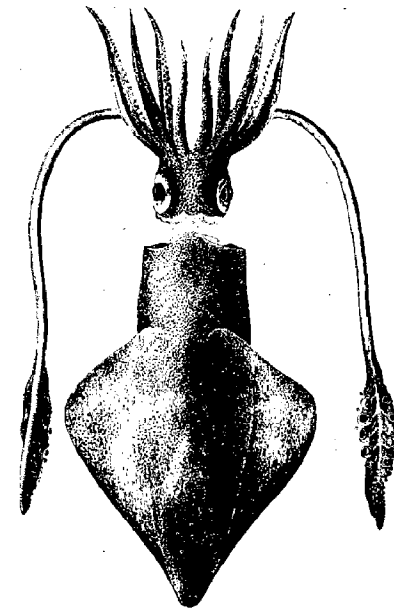
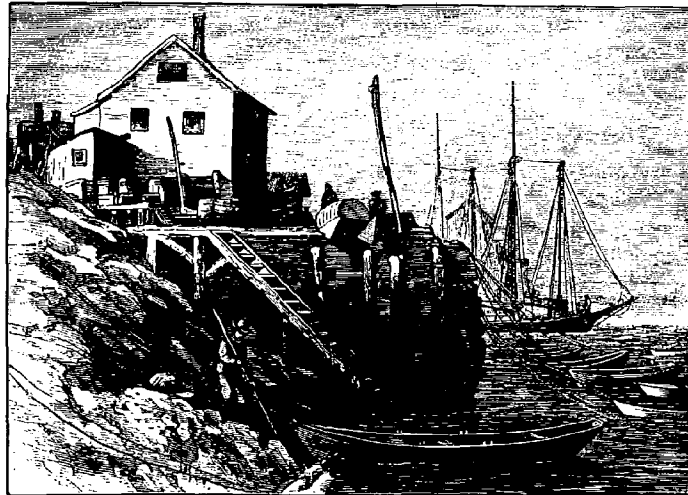
## II. WHO OWNS THE SHORE?

### Public Access in Massachusetts: Historical Background.

The shortage of coastal land for public enjoyment is a relatively new phenomenon in the Bay State. Before the arrival of the English colonists, the inhabitants of Massachusetts were free to hunt and fish in coastal areas as well as inland. Private property rights did not extend to ownership of the beach and there were no bulky buildings to separate the water from the village.

### The Public Trust Doctrine

The Colonists brought with them the English system of laws,



including guarantees in the Magna Carta of 1215 that tidelands were in the public domain. This concept, the Public Trust Doctrine, dates back to Roman law, and was codified by Justinian in 529 A.D., in the following language:

“By natural law itself these things are the common property of all: air, running water, the sea, and with it the shores of the sea.”

### The Colonial Ordinance

In 1641 the Massachusetts Bay Colony became the first colony to codify the Public Trust Doctrine in America. First, through the 1641 Colonial Ordinance, they guaranteed public access to great ponds. Then in 1647, they amended the Colonial Ordinance to extend private property ownership to the low tide line, to protect littoral property against the Crown's claims, and to thereby encourage private wharf construction and maritime commerce. In England, royal challenges to the shore owner's property rights constituted one of the grievances which Parliament presented to King Charles I in 1640, protesting "the taking away of men's rights under color of the King's title to land between the high and low water mark." The

Colonists, however, were careful to safeguard public rights in the intertidal zone, and expressly reserved the public rights of fishing, fowling, and navigation in these lands. These three rights represented at that time the only significant public activities on the foreshore. As a result, the first state to recognize the Public Trust Doctrine also is one of a handful of states which extends private rights below the high water mark.

In brief, public rights in private tidelands are limited to fishing, fowling and navigation. In Commonwealth tidelands, the public is entitled to full enjoyment and use as with a public park. Figure 1 illustrates the pattern of private ownership in Commonwealth tidelands which the colonists sanctioned.

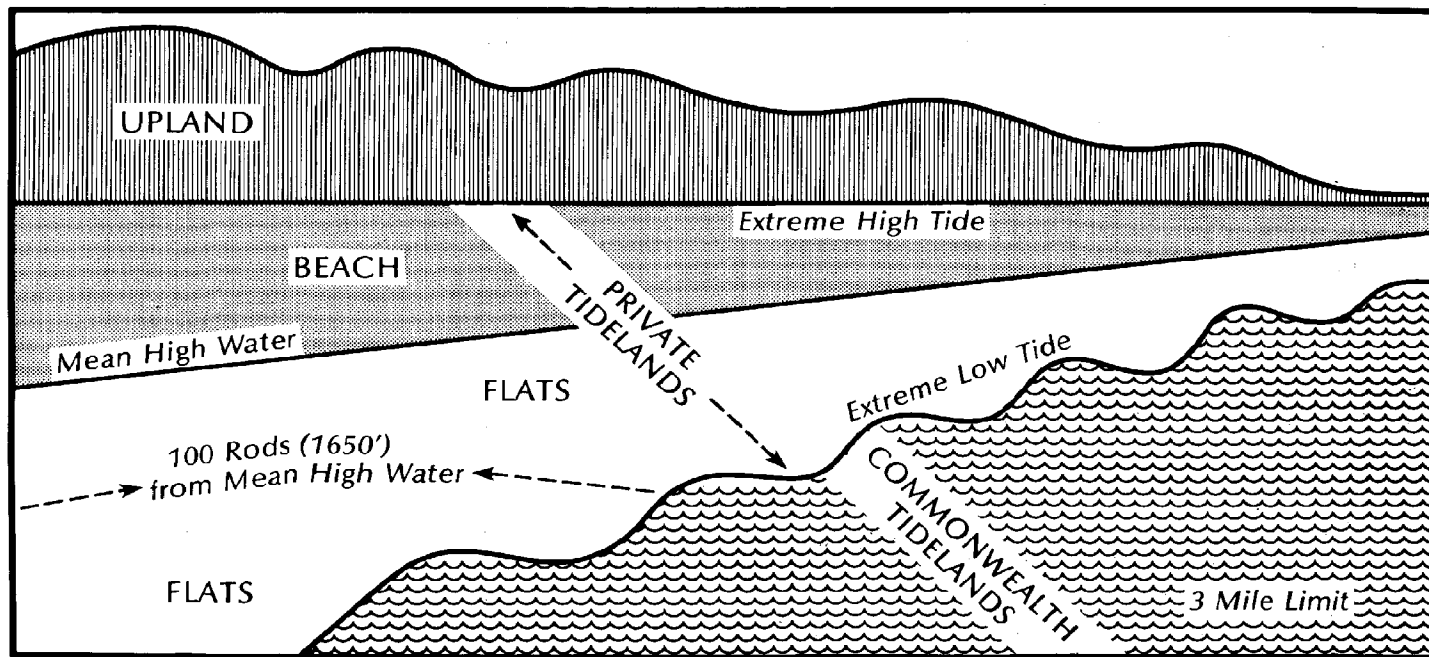


Figure 1  
Undeveloped Shoreline

**Figure 2**  
Public Rights and  
Government Jurisdiction  
Boundaries for the  
Massachusetts Coast

Federal Jurisdiction: From 3 miles offshore to 200 miles, (with some limitations).
State Jurisdiction: Mean high water and below to 3 miles offshore.
Municipal Jurisdiction: None (unless property owners). From mean low to 3 miles for shellfishing (except sea clams and ocean quahogs, check local laws).
Private Property: Extreme low water line or 1650 feet, whichever is less, and above. Property deed may state otherwise.
Flats: Land lying between the mean high water line and the mean low water line, or 1650 feet from the mean high water line, whichever is the lesser.
Submerged land: Land lying below historic mean low water mark.
Public Rights in Tidelands: Land below mean high tide is open for the purposes of fishing, fowling and navigation. It is not open for the purpose of walking on the beach or bathing.
Cape Cod National Seashore: Extends from the mean high water mark to ¼ of a mile if the property was acquired from private property owners.

## Court Interpretations of Public Rights on Tidelands

What activities are the public entitled to pursue in private tidelands under the definitions of "fishing, fowling, and navigation?" Massachusetts courts generally answer that the public's rights are limited to "natural derivatives" of fishing, fowling and navigation. For instance, swimming has been construed as navigation, so long as one does not touch bottom on private lands. Likewise, the right to fish has been construed to authorize lateral

access to fishing grounds, the taking of floating plants but not plants which have come to rest on the beach, and the right to cut ice. Not all Massachusetts decisions, however, have been restrictive with respect to public rights in private tidelands. In *Home for Aged Women v. Commonwealth*, 202 Mass. 422 (1909), the Supreme Judicial Court of Massachusetts ruled that:

"We think it would be too strictly doctrined to hold that the trust for the public . . . is for navigation alone. It is wider in scope, and it includes all necessary and proper uses in the interests of the public."

However, in another key ruling, *Butler v. Attorney General* 195 Mass. 79 (1907), the same court decided that public sunbathing on private flats or trespassing with intent to swim were not reserved rights under the Colonial Ordinances. And in a nonbinding advisory opinion in 1974, the Supreme Judicial Court found unconstitutional a bill which would grant the public the right to stroll along the beach. It appears that the question of public rights in private tidelands in Massachusetts remains partially open.

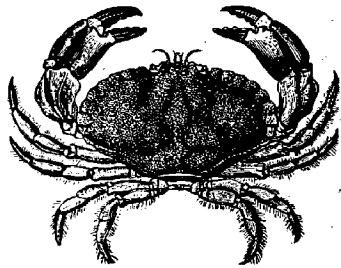
## Conflicts over Public Access

As the state's population continued to grow and recreation patterns evolved, beachfront communities acquired three distinct populations: the year-round residents, the summer residents, and the short-term tourist or beach-seeker. Development proceeded rapidly; subdivisions blossomed on the coast; beach cabins were built shoulder-to-shoulder for miles. The diminishing supply of undeveloped beach would create conflicts as these populations competed for access to the shore.

Changing public attitudes toward the coastal environment have also played a role in limiting the amount of shore available for public recreational use. As more has become known about the critical role barrier beaches play in shore protection and in maintaining natural diversity, further conflicts have arisen between beach enthusiasts and those who fear the damaging effects of excessive or irresponsible beach use.

### The Automobile Age: New Pressure on Beaches

In this century, the Massachusetts courts have said little to open up private beaches for recreational use beyond the three rights of fishing, fowling and navigation. Meanwhile, however, a revolution was taking place in Massachusetts society which would directly affect the question of public access to the coast. As income rose, people's supply of leisure time increased dramatically, and even now is projected to double over the next decade. At the same time, the proliferation of the automobile, the construction of highways, and the growing importance of tourism to the Massachusetts economy all contributed to new pressure on beach areas of the state. The demand for swimming facilities increased by 72% over a recent twenty year period, while the supply of available public beach increased only slightly.



### Urban Waterfronts: Decline and Rise

Apart from its beaches, the state has witnessed equally striking changes in its urban waterfronts over the past century. As the clipper ship and whaling activity declined in the last century, the waterfronts entered a period of neglect. Piers rotted; warehouses stood vacant; other, non-water-related activities began to take over as the value of waterfront property sagged. Uncontrolled pollution of bays and harbors further added to the undesirable nature of waterfront districts. In the larger cities, the container revolution changed the nature of shipping, and made many of the waterfront

freight-handling activities obsolete. As a result, towns increasingly turned their backs on the water, and waterfront property in many communities was appropriated for interstate highway construction, which further cut the water off from the public.

The past twenty years have heralded a turnaround in the fortunes of most Massachusetts waterfronts. This trend was aided by several factors, including an influx of public money, the passage of the Clean Water Act and successful efforts to abate water pollution, and a rediscovery in many towns — Boston, Salem New Bedford, Plymouth, Gloucester — of their maritime heritage, and the tourism potential therein. Redevelopment of the urban waterfront became a priority in many coastal communities, with the provision of public access a key objective.

Federal legislation supported the trend toward opening up the coast for the public. Amendments to the Coastal Zone Management Act in 1976 encourage participating coastal states to include in their planning "the protection of, and access to, public beaches." Then in 1977, amendments to the Clean Water Act required "open space and recreation opportunities" as part of water cleanup activities, and stipulated that water quality management plans must include "consideration of potential use of lands associated with treatment works and increased access to water-based recreations."

### Public Rights on Filled Tidelands: Help from the Courts

In their efforts to secure public access in redevelopment of urban waterfronts, Massachusetts towns were aided by a landmark ruling of the Supreme Judicial Court in 1979, which held that lands seaward of the historic extreme low water mark (such as certain filled lands and wharfs) could be held by private parties "only to fulfill a public purpose, and that the rights of the grantee to that land are ended when the purpose is extinguished." Furthermore, the court ruled that "economic benefit" generally is not sufficient to satisfy the "public purpose" test. This is so because the public purpose has to be specifically in the tidelands. Public access, on

the other hand, is likely to be viewed favorably as a legitimate public purpose.

This ruling was based on the common law doctrine that artificial alterations of tidelands such as those caused by filling in a portion of Commonwealth tidelands does not, in itself, alter ownership boundaries.

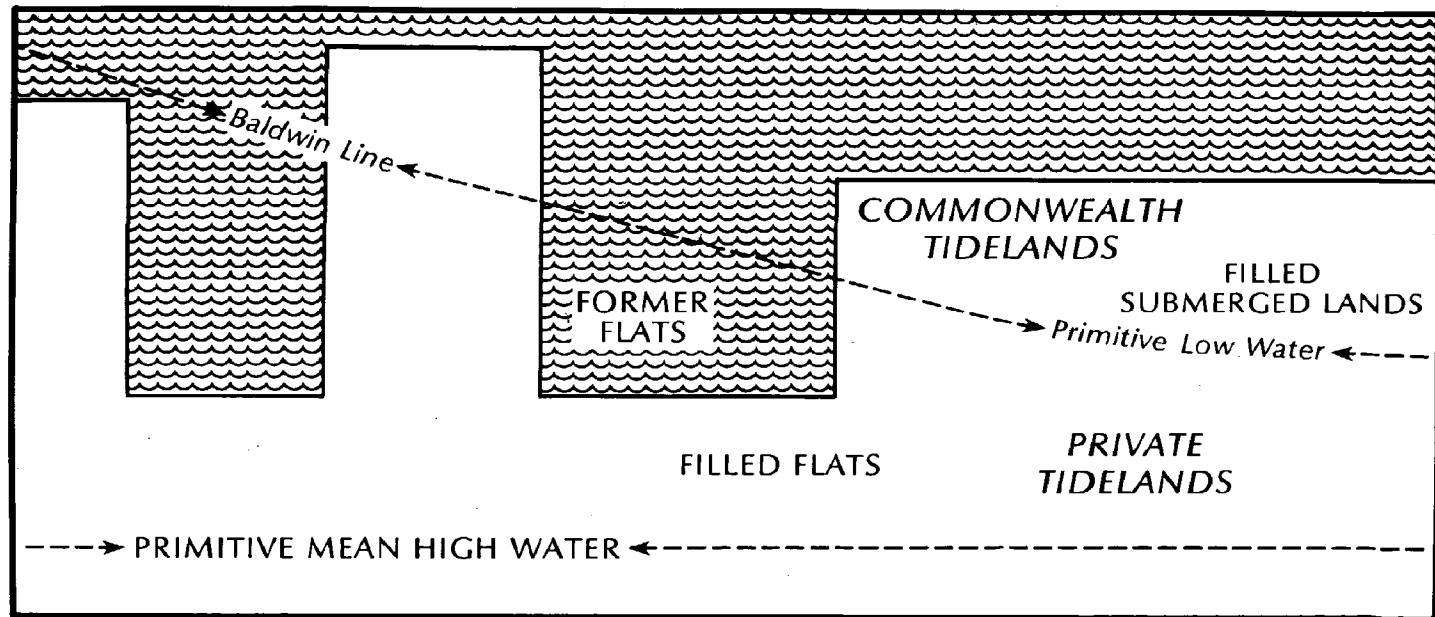
Note: To understand the ownership of an artificially altered tideland, see Fig. 3 below.

The consequences of this ruling are far reaching for the over 40 Massachusetts communities which have experienced significant coastal landfill. In the City of Boston, for example, some 570 acres of Back Bay are on filled Commonwealth tidelands.

The Legislature Responds

A recent enactment by the state legislature has given public officials an effective tool for acquiring public access especially in urban areas. For a century, Massachusetts General Law, Chapter 91, has required a license for all structures built or filling on tidelands. In 1983, the Massachusetts General Court made dramatic changes to the existing waterways licensing law. Following the 1979 Court ruling on tidelands ownership, the new legislation requires that development on Commonwealth tidelands must not only "serve a proper public purpose," but the purpose "shall provide a greater public benefit than public detriment to the rights of the public in said lands." (These amendments to Chapter 91 are discussed in more detail in the next section). This legislation provides towns with a powerful tool to encourage developers of waterfront property — much of which consists of filled tidelands — to provide public benefits, chief among which can be public access.

Figure 3  
Developed Shoreline



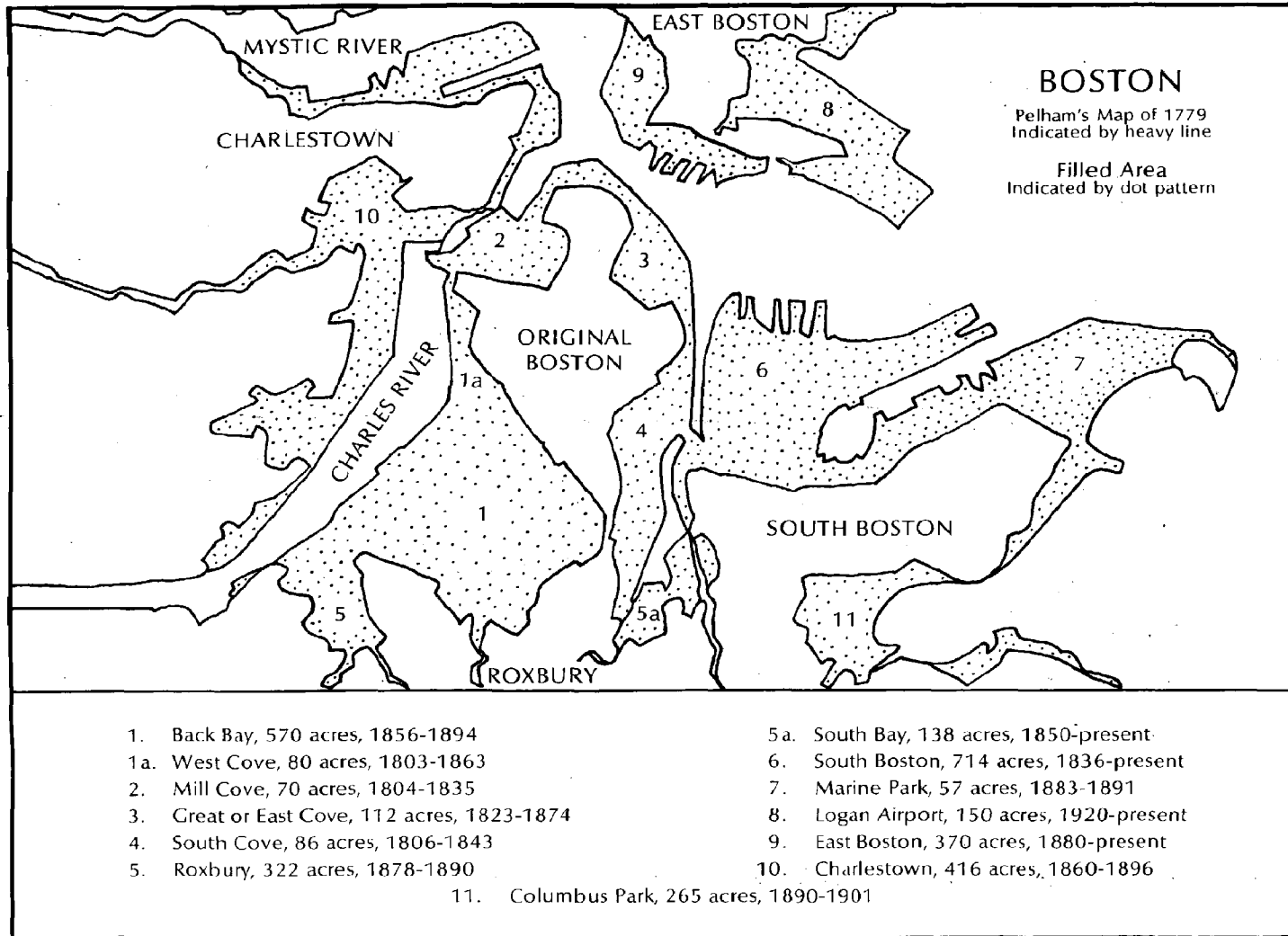


Figure 4  
Filled-in Areas of Boston



## Summary

The public's rights in privately-owned land between mean high tide and extreme low tide include the right to fish, to fowl, and to navigate. So far, the courts have determined that the public rights do not include walking on the beach, or using the foreshore for bathing. In current and historic tidelands, construction must be for



a public purpose, and must produce a greater public benefit than public detriment.

The effort to provide public access to the state's coast will have to take advantage of a number of approaches if it is to compete successfully with the pressure for development which is rapidly subdividing tracts of coastal property, or which in some urban areas has tended to wall the population off from the waterfront. Fortunately, a number of tools exist which are available for use at the local level to address the problem of public access to the water. These tools include regulatory approaches, such as tidelands licensing and creative zoning for the waterfront; legal tools requiring some litigation to establish the existence of historic accessways and easements; and acquisition tactics which can be more cost-effective than outright purchase of fee title by the public. These approaches will be discussed in the following chapters, with examples to illustrate their use. The final chapter highlights some practical issues involved in making public access to the water more effective.

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# III. LEGAL AND REGULATORY TOOLS

A number of legal and regulatory tools may be used to preserve or increase the amount of coastline available to the public for recreational use. This chapter will discuss a number of these tools, assess their effectiveness, and provide case examples of their use in a number of localities.

The tools to be discussed include protecting and perfecting title to existing and historic public rights of way, the doctrines of prescription and implied dedication, and the use of new amendments to the Massachusetts Chapter 91 statutes on waterways. In addition, the chapter discusses innovative solutions to the access shortage which make use of a community's zoning powers. Throughout, the focus will be on what is possible to do at the local level, with existing tools.

## Keeping What You Have:

### Protecting and Perfecting Historic Rights of Way to the Water

Compared with other approaches to secure public access to the water, perfecting and protecting title to public ways can be simple

and virtually costless, except where litigation is required to settle a contested case. Coastal communities should maintain an accurate inventory of public ways and easements, for such accessways tend to be lost over time unless towns are vigilant in keeping track of them.

Under state law, M.G.L. ch. 88 s. 14, each coastal city or town must provide at least one public landing way to water. At the state level, under M.G.L. ch. 21 s. 17, the Massachusetts Public Access Board is responsible for designating locations of public access to great ponds and other waters (see Appendix). Chapter 88 gives residents of coastal communities a right to petition for public landings. This law, moreover, establishes rules and regulations governing use of public landings.

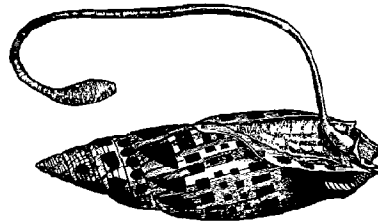
Since the establishment of new public ways under Chapter 88 requires the payment of compensation, a town's first step to provide public access should be to prevent existing town ways to water from loss through disuse or deliberate concealment. A title search for shoreline property may be in order. In some cases, the deed will define the boundary of the property as the mean high tide line, in which case the town will own the land seaward of this line, to the low water mark (Fig. 5).

Deed Language	Effects
"Property Bounded by the Sea" .....	Private Ownership to Low Water
"To the Water" .....	Private Ownership to Low Water
"To the High Tide Line" .....	Town or State Owns Area Between High and Low Water

Figure 5  
Legal Effect of Boundary  
Language in Waterfront  
Property Deeds

In other cases, town ways to water were incorporated into deeds when the land was first platted, and over the years these paths have been lost through the transfer of ownership and general neglect. Occasionally this neglect has been intentional: abutting property owners extend their lawns or driveways over the town way, and maintain it in a manner indistinguishable from their own property—with one exception: they refrain from paying taxes on it.

Some communities have chosen to deal with the problem of encroachment on recorded town ways by posting signs and



providing additional maintenance, such as trash barrels and boardwalks down to the tidal zone. Other towns prefer to avoid confrontation with neighbors to the town ways, and merely maintain a list of local town ways at the local town hall, available upon request.

An activist approach to identifying and maintaining local town ways may be handicapped by the lack of strong local support for such an effort. Residents may argue that *they* already know where the town ways are, and that posting signs would only draw unwelcome outsiders to the town's shore. Coastal communities who have sought to be responsible about maintaining their town ways have been confronted with vandalism and removal of signs and trash barrels.

Many town ways feature little or no parking, which greatly compromises their effectiveness in providing public access to the water. The problem is compounded by those who use the narrow town ways down to the water's edge, and proceed to turn right or

left and trespass on private property. These property owners often resent such intrusions, particularly if the offenders litter, make fires, or otherwise act irresponsibly. Where both parking shortages and narrow ways to the water are identified, a natural list of access improvement goals may be generated for a community. The list may include the negotiations of easements or other agreements to make the area more compatible for public use.

Notwithstanding the difficulties inherent in maintaining town ways to water, towns should, at a minimum, be knowledgeable about their existence and location. Several steps are necessary to research old town ways:

1. Visit the County Registry of Deeds, and examine titles for evidence of town ways or easements.
2. Search Tax Exempt records. Usually abutters to town ways will not be paying taxes on the public strip of land.
3. Go through the city or town clerk records, the classification of roads index, and the town's property map..
4. Examine the city or town assessor's maps.
5. Look for an existing Town Landing Places map.
6. Search out knowledgeable persons such as the Harbor-master for anecdotal information.

Where title to town ways is unclear, the matter may need to be referred to Land Court for adjudication. Generally, the public's right to access can be established if one can prove that uninterrupted public use of a way occurred for at least twenty years. This doctrine of prescription will be discussed later in the Chapter.

The importance for towns to maintain accurate, up-to-date records of their town ways to water may not be immediately apparent. In some harbors, ancient rights of way have long been superseded by other access ways or by other waterfront uses. For example, demand for an accessway for fishing may decline temporarily, perhaps due to a deterioration of local water quality. It makes good planning sense, however, to preserve town ways which have become obsolete for one use, for new uses in need of accessways are bound to arise. For example, in waters where



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**Case Study #2:  
NEWBURYPORT USED HISTORIC TOWN WAYS  
TO SECURE PUBLIC ACCESS IN NEW  
WATERFRONT DEVELOPMENT**

*The Town of Newburyport in 1981 completed a ten year struggle to preserve public accessways in a portion of its waterfront. The area had been condemned by the local Redevelopment Authority and sold to a private developer. After several court hearings, the appeals court confirmed that the 6.4 acre site did in fact contain two accessways dating from the 18th century, as well as a small half-acre park which had been dedicated in perpetuity to the public. In the subsequent out-of-court settlement, the park was expanded to an acre, and a total of four accessways were granted to the public.*

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### Posting Ways to Water

Where title to town landings and ways to water are clearly established, the problem may remain of making this information available to the public with a minimum of opposition from private owners who abut the accessway. This may require some negotiations. The town of Barnstable, for example, recently inventoried its town ways to water and posted signs to identify them. This provoked conflicts with local landowners. Marblehead has reached a compromise by maintaining street signs instead of "Town Way to Water" signs to denote public accessways. Falmouth, pursuing a different approach, maintains at the Town Hall a list of town ways, landings, and public beaches. This list is furnished to the public upon request.

In general, placing signs identifying public accessways and providing for public maintenance of these areas (for example, by installation of trash receptacles) are the best ways to preserve

existing public access rights. Public maintenance of accessways is usually sufficient to defeat any efforts to withdraw publicly dedicated land. This may require limited public expenditure, but far less than would be required for outright purchase.

Establishing clear title to coastal property may be complicated by shifting sands and changes in the actual line of mean high tide, where this is the specified boundary of private property. In Provincetown, for example, most private property ends at the mean high tide, unlike the rest of the state, where the historic low water mark is the boundary. Yet the mean high tide line has changed considerably since the last official survey, in 1939. Where people have built seaward off the historic private property boundary, the town has refrained from taxing them, since they are technically on public property. In short, shoreline changes can complicate title searches, yet this method will yield significant public access at little cost over the long run. In particular, towns should examine deeds for evidence of private ownership ending at the high tide mark, as specified in many deeds (see Fig. 5, above).

Finally, it should be added that clearing title to town landings which have been encroached upon, or to the wet sand and foreshore seaward of the mean high tide line, may require some expense to litigate. This expense will be minimal where the deed is clear and unmistakable. In other cases, a negotiated settlement between the town and the abuttor may be preferred.

### When Informal Access is Restricted

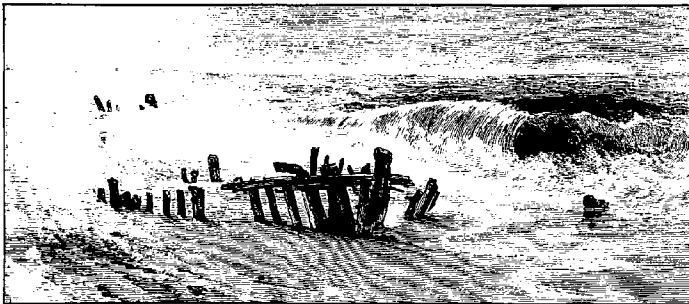
#### Prescription

One of the most common sources of conflict over beach access occurs in communities where local residents have long used a private beach, and the landowner suddenly posts "No Trespassing" signs or otherwise moves to exclude unauthorized visitors. In such a situation, the most useful legal tool may be the doctrine of *prescription*.

Prescription is similar to the notion of squatter's rights: if you use a piece of property long enough without the owner's permission, you acquire the right to continue using it. In the beach access context in Massachusetts, those seeking to establish prescriptive rights to an easement over private property must meet the following tests, according to General Laws, Chapter 187, Section 2:

1. They must prove uninterrupted use of the property for at least 20 years, although seasonal use may be enough;
2. This use must be notorious, and adverse, (i.e. without the owner's permission).

Prescription may be effective in obtaining rights for qualified persons not only to cross private property, but also to use the beach for recreational purposes. It will be particularly useful at



the neighborhood scale, and can be effective in resolving long-standing beach access controversies. Although prescription can only be established through litigation, cases often need not be brought to trial. Where the evidence suggests a finding of prescription is likely, a negotiated settlement out of court may often be reached. The threat of litigation, however, may be an effective "bargaining chip."

The courts in Massachusetts have been reluctant to recognize prescriptive rights in the public as a whole, and instead have tended to grant prescriptive easements to individuals or in some

cases to town residents. Prescription can, in special circumstances, be obtained for the public-at-large. Usually this requires the basic tests for prescription described earlier — combined with an expenditure by the state, a municipality, or other public body.

Prescription as a public access tool may be best used in settling neighborhood disputes over the use of a beach path or a section of beach, where the owner seeks to keep people out. It may be relatively easy for local residents to meet the tests of 20 years of unbroken use, without the owner's permission. Once the court has found that a prescriptive right exists, the resulting easement is recorded in the deed to the property in question. Once recorded the easement cannot be obstructed or denied, even after transfer of the title to another owner. Prescription may also be used to acquire paths to the beach. Prescription may be of less help, however, in opening up local beaches to non-resident users, as they will find it harder to meet the necessary tests.

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### Case Study #3: SWAMPSCOTT USES PRESCRIPTION FOR WHALES BEACH

*The Town of Swampscott benefitted from the doctrine of prescription when an appeals court ruled in 1981 that the town had acquired the right, by prescription, to use a 1200 foot beach known as Whales Beach. The abutters claimed that their land included the beach, but the court found that the prescription test of open, continuous, and notorious use for twenty years or more had been met, entitling town residents to use of the beach. A second test, that the town "Must have taken some corporate action indicating it believed it had the right to use the land" was also met from evidence that the town policed and maintained the beach, and did not tax the owners for the beach front. The court, however, declined to broaden the prescriptive right to include the general public, limiting it instead to town residents.*

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### Implied Dedication

Yet another legal tool which may be used in certain circumstances to establish a town's right to use a beach or other waterfront property is *implied dedication*. Under normal dedication, the property owner explicitly deeds his land to the public, and the public accepts and uses the land as dedicated. Under implied dedication, no explicit dedication may be necessary, so long as it can be proved that it was the owner's *intent* to have the public use his property, and that the public *accepted* this implied dedication.



Unlike prescription, which occurs only after twenty years of open, continuous use without the owner's permission, implied dedication has no time minimum, and can occur where permission to use the land has been given. If permission was given, the courts may find an implied dedication occurred. In Massachusetts, this public use must be accompanied by *acceptance* of the dedication, by a public authority. This acceptance may be demonstrated, for example, by municipal maintenance and policing of the waterfront or beach. Unlike prescriptive rights which can be extinguished if not litigated immediately upon a landowner's challenge, dedicated rights cannot be revoked, once the court finds that a dedication occurred. This tool, therefore, potentially offers a way to secure lasting public access much more quickly than does prescription.

One possible drawback to the use of the doctrine of implied dedication to secure public access to a beach is that those landowners who had been generous in letting others use their beach may grow more restrictive, for fears of giving up some of their property rights through implied dedication. Still, this tool may be very useful in certain situations.

### Public Access in Waterfront Construction

#### Waterways Licensing Under Chapter 91

Certain 1983 amendments to Chapter 91 of the Massachusetts General Laws and Acts provide local communities with important new tools in their efforts to provide more public access to their shoreline. These amendments are the most significant legal development pertaining to waterfront land use since 1866. Chapter 91 requires every project built below the historic high water mark to obtain a license from the Department of Environmental Quality Engineering (DEQE), Division of Wetlands and Waterways. A license fee is assessed to compensate for the public rights granted in the license. This provides a clear reminder to both the public and the license holder that public rights exist in those lands.

The 1983 Chapter 91 amendments provide for new procedures as well as substantive requirements relevant to increasing public access. Procedurally, there are a number of provisions which ensure public notification of proposed projects and an opportunity to comment. Substantively, waterfront projects must now be found to benefit the public before a license can be issued.

#### New Procedures for Non-Water-Dependent Projects

All proposals for projects not dependent on proximity to the water, such as restaurants and condominiums, must receive a public hearing in the affected community. Prior to this public hearing, the license applicant will publish a notice in the local paper and notice will be sent to the Town Hall. While project requiring direct access to the water, such as boat docks, do not require a public hearing, a local official can request that a public hearing be held.

#### Criteria for Licensing

Before any project can be constructed below the historic high water mark (recall from Chapter II, Figure 3, that this includes all

formerly filled tidelands) a number of important determinations must be made by DEQE. Any non-water dependent project must meet three criteria:

1. The project must serve a "proper public purpose."
2. The project must provide greater public benefits than public detriments relative to the tidelands.
3. The project must be consistent with the Massachusetts Coastal Zone Management Program.

On the other hand, *water-dependent* uses must satisfy conditions (1) and (2), but consistency with the CZM Program is only mandatory for activities in Commonwealth tidelands (below extreme low water).

Officials from the community affected by the proposed project can play a significant role in the proper public purpose determination. This determination will be based largely on whether the proposal adheres to local waterfront or harbor management plan. A community with a comprehensive waterfront plan certified by CZM, therefore, will be able to influence significantly the Chapter 91 licensing decision.

To satisfy the benefit-detriment and the CZM consistency tests, proponents of waterfront projects must provide significant water-related benefits to the public. Local officials may contribute to the Commonwealth's evaluation of the adequacy of these public amenities at the public hearing and in writing. Substantial public access amenities, such as waterfront park areas or public boat slips will be needed to satisfy these two tests. Suggestions from local officials regarding the community's needs for certain public access amenities will be carefully considered in the Chapter 91 licensing process. Chapter 91 also allows a developer to provide public improvements to a harbor as an alternative to paying a fee for tidewater displacement. In lieu of paying this fee, developers may be authorized to provide public access themselves, on or off site, or contribute to a local fund for public access.

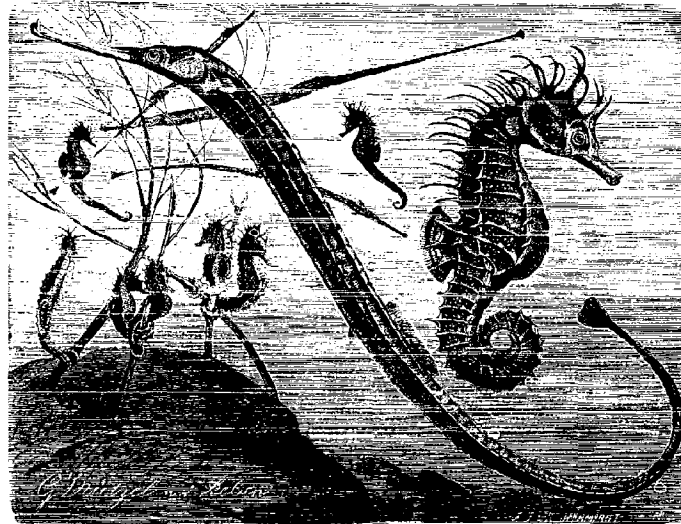
The Chapter 91 amendments provide a powerful tool to local communities in encouraging waterfront development on tidelands to include provisions for public access.

## Zoning Solutions

Under the police power to provide for the public health, safety, and general welfare, local communities enjoy the power to create special zones dedicated to certain uses and prohibiting others (M.G.L. ch. 40A). In Massachusetts, local officials enjoy a strong judicial presumption in favor of validity of all zoning efforts. Among these are the creation of waterfront districts, overlay districts, "incentive" zoning, and the rezoning for non-residential and recreational use of storm-damaged coastal property.

### Waterfront District

Coastal communities can protect and enhance the special character of the shoreline and waterfront by creating special zones which set forth certain criteria and performance standards for waterfront development. One example is the town of Plymouth, which has had a waterfront district since 1973.





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**Case Study #4:  
PLYMOUTH'S WATERFRONT DISTRICT**

*In order to promote uses consistent with the historic and maritime character of its waterfront, Plymouth created a special district which favors the development of marine, historic, and tourist uses along the town's central waterfront. The ordinance provides for three categories:*

1. *Allowed waterfront land uses;*
2. *Special Permit Uses (which must meet environmental review procedures); and*
3. *Prohibited uses.*

*All approved uses in the waterfront district require public access provisions. (The entire text of the ordinance appears in the Appendix.)*

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**Overlay District**

A second option available to municipalities to zone on the waterfront is to establish an interim "overlay district" for the shore which regulates development activity for a certain period of time. Provincetown has used this approach successfully, and the City of Boston has recently proposed such an overlay district for much of its waterfront to promote its "Harborpark" plan. In such a district, certain development guidelines are to be followed, notably the provision of visual and pedestrian access to the water's edge.

**Incentive Zoning on the Waterfront**

Another zoning approach which has been effective in securing public access to the coast is incentive zoning, also known as "bonus" zoning. Under this approach, the municipality grants certain concessions to the developer in exchange for public benefits, such as the provision of public access. Incentive zoning must be done carefully to avoid charges of "spot zoning." The

City of Beverly has used this tool to secure a walkway along the water's edge.

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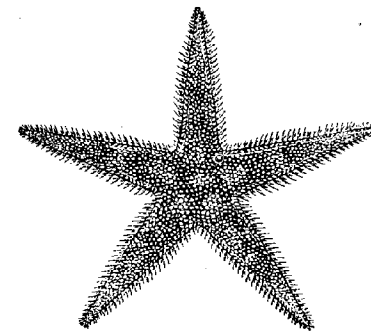
**Case Study #5:  
BEVERLY'S INCENTIVE-ZONED  
WATERFRONT DISTRICT**

*Concerned that development along its waterfront would effectively cut the city off from the sea, Beverly moved in 1976 to create a waterfront district in which development densities were set relatively low. Developers seeking to build at higher densities may be granted variances if they build a public boardwalk along the water side of their property.*

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**Transferable Development Rights**

Often viewed as a type of "clustering," a method of transferring development rights (TDR) may be designed on a local level. The community would identify "sending" areas where development is discouraged, and "receiving" areas where a higher density of development is permissible. By allowing the transfer of develop-



ment to the receiving area, open space and access in the sending areas can be preserved. While no TDR programs have yet been instituted in Massachusetts, many have been implemented across the country in New York, Florida and California.

### Rezoning of Storm Damaged Property

A third zoning tool which shows considerable promise as a way to increase public access to the coast is a zoning response to coastal property damage due to severe storms. Under the police power, towns may decide that to allow the rebuilding of damaged residential and commercial areas in certain locations poses a threat to the public welfare and safety. The area is viewed as a demonstrably hazardous zone. Accordingly, power lines, sewers and other public amenities may be deemed too risky to reintroduce to these areas after their damage or destruction.

An appropriate reuse of this type of coastal property is public recreation. Towns may use the opportunity afforded by the storm damage to prohibit further development and repairs in the affected zone, and zone the area for non-residential, recreational use. Public acquisition of storm-damaged property is discussed in the next chapter.

### Development Moratorium on Waterfront Parcels

Sometimes a town may be interested in acquiring waterfront land which otherwise would be developed, but the town may lack the funds necessary to finance a purchase. In such a situation, the town may take advantage of its authority to require a developer to set aside a certain amount of open space for up to three years, and to give the town the option of buying this reserved land. Unlike many other states, Massachusetts cannot require developers to dedicate permanent open space or accessways to the public. (An exception may be possible where a town can attribute the need for recreational open space or accessways as a facet of the new development, and not to the community as a whole). As was discussed earlier, developers of tidelands may be encouraged to



provide public access as part of the test that the public benefit from their development outweighs the public detriment.

### Summary

A number of legal, regulatory and zoning tools discussed in this Chapter may be utilized to promote public access to the water. The perfecting and protection of historic town ways to water should be the starting point for local efforts. The doctrines of prescription and implied dedication may be of use in settling neighborhood disputes over customary uses of the beach. Chapter 91 tidelands licensing statute and the zoning authority represent powerful new allies in the campaign to preserve access to the Commonwealth's shores. In several of the zoning and regulatory approaches described, the question of a public "taking" private property arises. This is a legal doctrine which is frequently misunderstood. Clarification and references on this topic may be found in the Appendix.

In addition to these legal tools, other cost-effective techniques exist for communities to secure more public access to the shoreline. These acquisition options will be discussed next.

**Further Reading**

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*Harborpark: A Framework for Planning Discussion*, Boston Redevelopment Authority, Boston, Massachusetts (October 1984).

LaFargue, James F., *Practical Legal Remedies to the Public Beach Shortage*, *Environmental Affairs*, Vol. 5, p. 447 (1976).

Littman, *Tidelands: Trusts, Easements, Custom and Implied Dedication*, *National Resource Lawyer*, Vol. 5, p. 447 (1977).

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## IV. COST - EFFECTIVE ACQUISITION STRATEGIES

Traditionally, coastal communities like most public agencies have sought to acquire public access through purchase of lands for the public. In the case of access to waterfront property, however, fee simple purchase of land for the public's use has grown prohibitively expensive. Not only has speculation driven up the cost of prime waterfront property, but communities — in an era of fiscal conservatism — are strapped for funds. Now communities must explore innovative ways by which public access can be acquired without paying the considerable sums typically required for waterfront property. The first section of this chapter will discuss cost-effective fee-simple acquisition techniques, such as donations, bargain sales, eminent domain, and purchase of storm-damaged property. The second section discusses less-than-fee-simple techniques, including the purchase of easements, the use of land trusts and conservation easements as incentives to landowners to allow public access to their waterfront property. Each of these techniques enables a community to acquire recreational access to valuable waterfront open space at a relatively low cost, and in some cases offer a significant benefit to the landowner.

### Fee Simple Acquisition

#### Purchase on the Market

The most widely used method to increase public access is also the most expensive: outright purchase of land — acquiring the fee simple title — by a public entity or non-profit groups such as land trusts. As waterfront property values have risen, few local communities can now afford to fund such acquisition out of general revenues. Some towns may be able to float public bonds for such

purchases, where the demand for coastal open space is great among local residents. Other money may be available from state or federal sources. The Appendix discusses the range of such state programs which may provide money for the acquisition of public access to the coast of Massachusetts.

#### Fee-Simple Acquisition via Tax Incentives

Where towns seek less costly alternatives to providing public access, they should explore the use of tax incentives to induce coastal property owners to donate or sell their property at reduced prices to a qualified charity, which includes the local government or conservation commission.



#### Acquisition by a Charity: Advantages

Using qualified non-profit organizations or charities instead of a public entity may have important advantages in the management of the property. This is because private charities typically have flexibility that the public sector lacks. It is easier, for instance, for a charity to limit access in environmentally sensitive areas than it

would be for a public entity. These groups may devote more concentrated time to the "stewardship" of an open space resource than a local government which has many divergent claims on its personnel and budget. Non-profit groups often draw on the volunteer time of naturalists and other experts. Some charities enjoy stable incomes, unlike municipal budgets where recreation funding levels tend to be unpredictable. In Massachusetts, the Trustees of Reservations and the Massachusetts Audubon Society own and operate thousands of acres of coastal property, much of which has been donated, and is open to the public.

Below are examples of acquisition strategies which take advantage of state and federal tax deductions resulting from donations to certified charities. Further examples of how these tools work may be found at the end of this chapter. One warning: in Massachusetts, a tax exemption is available only where the land devoted to the public use is open to an indefinite number of people. This may exclude certain groups, such as semi-private beach associations, from using this approach.

### Donation

One approach which local communities and non-profit groups can use to acquire coastal land for public use is to seek donations of such land from its owners. This may not be as impossible as it sounds. Aside from the incentive of public recognition for the donor, giving away land may actually save the donor money by avoiding payment of high capital gains tax on Federal and State income tax. Donations are normally tax-deductible, and so may be quite valuable to the donor as a tax shelter.

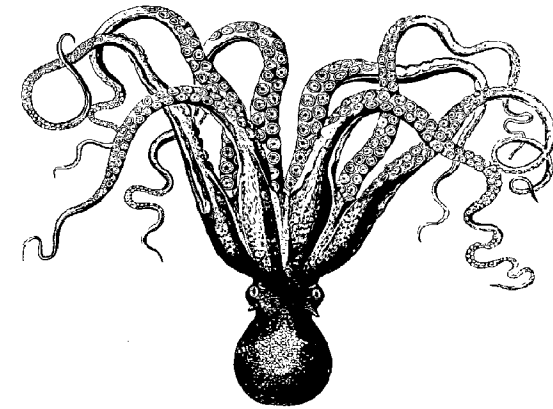
Donations allow the donor to deduct from his taxable income the fair market value of the gift. Donors should bear in mind that adding restrictions to the deed of the donated parcel may reduce the fair market values of the property, with a commensurate reduction of the size of the tax shelter.

#### *Example:*

Mrs. Donor owns several acres of beach property which she inherited from her family. Her ordinary income is \$155,000, and

the property, for which her family paid \$2,000 in 1893, is now worth \$160,000. Mrs. Donor is an avid swimmer, and wishes her land to remain available to the public for recreational use. By deeding her land to the town or to a non-profit land trust, she can:

- Avoid paying capital gains taxes of \$79,000 (50% of the value of the land, minus the basis of \$2,000);
- Shelter her ordinary income entirely from taxes;
- Avoid future property taxes on the land (these totalled \$3,700 in 1983);
- Avoid heavy estate taxes to be paid by her inheritors;
- Realize her wish that her beach be made available for public recreational enjoyment.

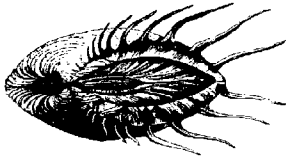


### Partial Gifts

A second form of donation which will be useful in certain situations is a partial gift. This is similar to a simple donation, except that the donor retains fee and unrestricted title to a portion of his or her property, typically where the house is. Under this arrangement,

the donor may still qualify for substantial tax deductions.

For both types of donations, it is up to public officials or representatives of land trust to ask property owners whether they would be willing to donate land for public use. The tax advantages to be realized for the donor will be especially useful where the donor has a large ordinary income, and seeks a tax shelter.



### Bargain Sales

Bargain sales of land for public use can be a relatively inexpensive way to acquire coastal land for recreational purposes. This technique takes advantage of State and Federal tax laws which under certain circumstances can save landowners money by selling their property for less than it is worth on the open market. This technique is particularly useful when the landowner has a big income, and originally paid much less for his property than it is now worth.

*Example:*

Mr. Donor has a plot of beachfront property which he bought for \$12,000 thirty years ago. This plot is now appraised at \$100,000 on the open market. His before tax income is \$60,000, which is in the 35% tax bracket.

Under current tax law, the long term capital gains tax allows the seller to keep all of his original cost of the property and one-half of the profit from the sale, without any taxes. Therefore, in our example, the owner keeps his original \$12,000 investment, plus \$44,000 (half of the \$88,000 profit). The other half (\$44,000) gets added to the seller's adjusted gross income before deductions. Barring some substantial deductions to shield this income from taxes, the seller will realize \$104,000 in taxable income, which

moves him to a higher bracket (50%). This leaves him with \$52,000 in after tax income (plus the \$56,000 he realized from the land sale). The net result from selling the property at its appraised value, therefore, will be an after-tax income of \$108,000. Of course, broker fees on the sale may reduce his profit even further.

Mr. Donor could do a bargain sale: that is, sell his property for less than the appraised value - say, for \$70,000 - to a government body (or to a non-profit landtrust). Now he can pocket the original cost of the property (\$12,000) plus one half of the profit (\$29,000). The other half gets added to his before tax income, for a total adjusted gross income of \$89,000. This amount is now eligible for a deduction of \$30,000, which represents the difference between the appraised value and the bargain sale price paid by the government. With the deduction, the taxable income amounts to \$59,000, which is in the 35% tax bracket. After paying taxes our man realizes an after tax net income of \$109,350. This represents a savings of \$1,350 to the seller through the Bargain sale approach. In addition, of course, the seller can avoid the expense of broker fees from selling his property on the open market.

In summary, the Bargain Sale approach can be useful for acquiring land for public access to the waterfront without paying speculator prices for the land. This technique will work best where the landowner originally paid relatively little for his property and thus stands to realize a substantial capital gain by selling his property on the open market, and where this added income could, through the tax system, adversely affect his ordinary income. Several examples of tax incentives for donations and bargain sales appear at the end of this chapter.

### Eminent Domain

One other form of fee simple acquisition may be useful in some situations for towns to acquire public access to the water: eminent domain. Massachusetts General Law, Chapter 79 gives a town or city complete title upon the recording of a "notice of taking" in the registry of deeds. The taking must be for a public purpose, and compensation equivalent to the property's fair market value must be paid.

To authorize a taking by a town conservation commission, it must be voted by two-thirds vote of the town meeting or city council, and executed by the Selectmen or Aldermen (or whatever municipal body has aldermanic powers). In addition to taking of the total ownership of a property (the fee simple title) a city or town may take any lesser interest in any land or water located in such a city or town. This would include taking of a conservation restriction, or an easement for public access.

Since M.G.L. ch. 88, s. 14 requires each city or town "where the tide ebbs and flows" to have a public landing, towns may have the power of eminent domain to establish public access to the coast in the form of a town way to water. However, this has not yet been determined by the courts to be a "proper public purpose" to justify a taking through eminent domain.

Because eminent domain requires that fair market value be paid for the property, its usefulness in the beach or waterfront access case will be limited. Nevertheless, where accessways already exist for a subdivision and are platted as such, then condemnation to open up the accessway to the general non-subdivision public should cost little, since property values will be little affected by additional use.

### Post Flood Damage Acquisition

One other form of low-cost fee-simple acquisition occasionally available to coastal communities is Federally aided purchase of flood-damaged properties. Post flood damage acquisition via the Federal Flood Insurance Program is authorized by the National Flood Insurance Act (42 U.S.C. 4102). Under this program, the Federal Government can purchase properties "damaged substantially beyond repair" rather than pay to reconstruct and rebuild them. Purchase is authorized when damage exceeds 50% of the property's value. The key is that the Federal Government can sell, lease, donate or otherwise transfer the property to any state or local agency which agrees to use the property for a minimum of 40 years for HUD-approved "sound land management."

A State or local government can take advantage of this program to acquire coastal lands for the public at bargain by paying the

*difference* between what HUD would normally pay to compensate for the *damages* sustained, and the price of outright purchase.

#### *Example:*

A property worth \$100,000 sustains \$75,000 of damage. Under the Flood Insurance Program, HUD is authorized to pay \$100,000 to acquire this property. However, if HUD paid only for the \$75,000 damage. Then the state would pay the \$25,000 difference, and take title to the property at a bargain price. The Federal Government benefits from paying less than the full market value of \$100,000 as otherwise would be required.

In Massachusetts, state acquisition programs give priority to the acquisition of hazardous coastal areas such as barrier beaches, under Executive Order No. 181: Barrier Beaches. (See excerpts in Appendix V. at the end of this handbook).

### Land Banks

#### *Case Study #6:*

#### **NANTUCKET'S SOLUTION LAND BANK FINANCED THROUGH REAL ESTATE TAX**

*Another fee-simple acquisition approach which has been useful in preserving public access to the coast is a tax on local land sales to finance acquisition of public access, beaches and other open space. This approach was pioneered in Nantucket, where the tax is set at 2% of all real estate transactions, excluding transactions between family members, transfers between individuals and government entities, and transfers for charitable purposes. The proceeds go into a land bank, managed by elected officials, which fund the purchase of beaches, marshes, and moors as they become available.*

*Nantucket has recently expanded the land bank by using a form of tax increment financing, whereby future revenues from the land transfer tax would be used to fund a bond issue for the prompt acquisition of key parcels.*



To institute a Nantucket-style land transfer tax, legislative approval is required followed by passage of a local ordinance. Presently land bank proposals are under consideration by Martha's Vineyard and Barnstable County. The Legislature is also considering the allowance of land banks for conservation purposes at a local option (2/3 vote by a municipality).

### Acquisition of Less-than-Fee Simple

The preceding section discusses ways by which coastal communities can acquire lands for public use along the shore. This section outlines another approach: less-than-fee-simple acquisition. Under the techniques described here, communities can purchase or otherwise acquire rights of public access, but the

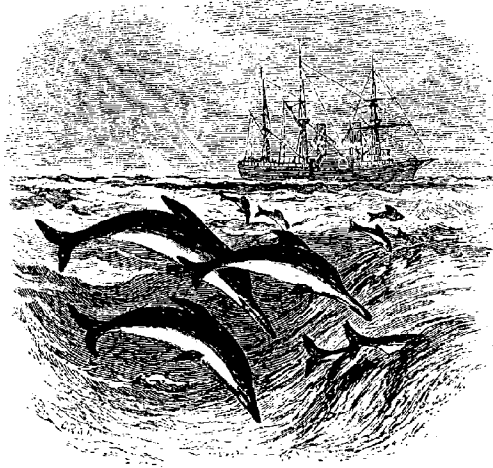


actual title to the land remains with the original property owner. The techniques to be discussed here include purchase of easements, the establishment of prescriptive easements, conservation easements, and leasing of beach property for public use.

### Easements

An easement is a limited right which a property owner grants to someone else to use the owner's property. Title remains with the original owner; the easement is usually limited to a particular person or group of persons. To secure public access to the water, two classes of easements may be useful. The first is the "affirmative" easement, which entitles the recipient to some limited use of the land. The second category is the "negative" easement, such as a conservation restriction, which precludes certain uses of land, but may be written to allow public access.

An easement may be bought and sold. Its price will vary according to location, size, and other property characteristics. Depending on its value, the sale of an easement may provide



significant tax savings to the property owner, since such a sale usually diminishes the value of one's property. Property which is encumbered by an easement will normally be liable for less taxes than before the easement; it will also diminish the resale value of the property measurably, and so will reduce the amount of capital gains tax for which the owner will be liable upon sale of the property. *Donation* of an easement will create a tax shelter worth the value of the easement.

The financial incentives to the landowner for selling or donating to the public an easement to his property will vary, depending upon his income, tax bracket, and the amount of capital gain he stands to realize from the property's sale.

As a practical matter, it will likely be easier to convince owners of urban waterfront property to sell or donate easements for public access than to convince beachfront owners of the merit of this approach. Beachfront property owners tend to be private homeowners and generally have not been interested in allowing the public onto the beaches for recreational purposes. In other states, property owners are routinely required to provide public access easements through their property, from public roads to the beach. In Massachusetts, as described above, private ownership rights over recreational sandy beach areas are broader than in most states. As a result, perpendicular access via an easement to the beach is of limited value, unless the public would then have the right to turn right or left, off the narrow easement, onto private sandy beaches.

One solution would be to acquire (through purchase or gift) a public easement *along* the beach. This is bound to be much more expensive than the perpendicular accessway, and it will probably be more difficult to find willing sellers or donors.

Easements can be particularly useful in coastal subdivisions, to provide non-beach-property-owners with access to the beach (especially where the beach is owned by a beach association of local residents). Easements may also be useful, in cases where a beach owner needs money but does not wish to sell his property outright.

To guarantee that the acquisition of easements in fact increases public access to the beach, it will be necessary in many cases to provide parking near the accessway. Lack of parking has hampered the use of many existing town ways to water; the problem would be the same for easements to the water which pass over private land.



### Limitations on Liability

Under state law Chapter 21 s. 17c, "a private landowner who opens land to public recreational use without a fee is not liable for injuries to persons or property due to public use unless the owner's conduct is willful or reckless." This protection should reassure those landowners who might then be willing to allow public use of their beach or path to the water, but are concerned about becoming liable for public safety.

### Conservation Restrictions

Another form of easement which may be employed in the effort to open up more coastal property for public enjoyment at low cost is the conservation restriction. Under this approach, the owner retains title to his land, but conveys an easement to the town or other governmental or authorized private organization. The easement specifies restrictions on the current and future use of the land. These restrictions typically result in a decrease in the value of the property, and thus can provide owners with significantly lower property taxes immediately, and capital gains tax savings on any future sale.

Conservation restrictions effectively preserve land in a relatively undeveloped state which in many cases will be suitable for beach recreational purposes. Trouble may arise, however, should a conservation easement be so restrictive as to effectively preclude any public access at all. Towns and private organizations seeking to take advantage of conservation restrictions should carefully examine proposed language, and if necessary, negotiate for the inclusion of some public access as a permissible use of the land. In return, the town could agree to reassess for tax purposes the conservation restricted property. Under M.G.L. ch. 1984, s. 31, conservation restrictions may go into effect only upon approval by the Massachusetts Division of Conservation Services (see Appendix).

Conservation restrictions usually require "proof of management" of the easement. Certain non-profit associations such as the Trustees of Reservations and the Audubon Society or a community group may be available to provide the necessary management of conservation properties. Thoughtful stewardship can result in sensitive areas being opened up for limited public use. For additional information on the use of conservation easements or restrictions in Massachusetts, see Appendix VI at the end of this handbook.

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### Case Study #7: THE TOWN OF BARNSTABLE'S CONSERVATION COMMISSION

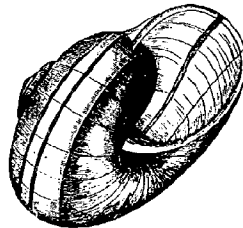
*The Town of Barnstable's Conservation Commission administers a program whereby the owner of a parcel of land may give up development rights on the parcel in exchange for a 75% property tax deduction, in addition to any federal tax deductions which accompany the donation of these development rights to a registered charity or government entity. If the owner allows public access to this land as well, then fully 90% of this property tax is abated.*

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In all of the easements methods described in this Chapter the landowner, and the community or group seeking the easement, should be careful to comply with Internal Revenue Code Procedures regarding the appraisal of easements. In order for the tax deductions to be acceptable by the IRS, certain documentation is required. (See Further Reading.)

**Leasing Beachfront Property for Public Use**

In cases where a beach owner wishes to retain title to his beach, a town should explore the possibility of entering into an agreement to lease a portion of the beach, or an accessway, for public use. Leases are flexible instruments and may be written many different ways. One variation might yield a stretch of beach for seasonal public use, at a low cost to the town. Another common variant is to include an option to purchase clause, which allows the lessee to buy the land before the lease expires. This might allow an owner and a community to experiment with providing a public beach, and only actually sell the land after its suitability for public recreational use had clearly been demonstrated.



Leasing beaches for public use may alleviate the short term shortage of public access, in a flexible way, at a reasonable price. It is less useful as a long term solution to the problem. Leasing may also be useful to demonstrate to a skeptical owner that public use — and maintenance — of his sandy beach need not have unacceptable consequences to the rest of his property and his privacy. It may encourage him to dedicate the beach area to the public, in return, perhaps, for certain tax benefits.

**Acquisition Examples**

**Example 1:  
Open Sale: At Fair Market Value**

If sales price is:	\$100,000	\$130,000
Basis	2,000	2,000
Capital Gain	98,000	128,000
Federal taxable gain at 40%	39,200	51,200
State tax at 7%	6,860	8,960
Federal tax at 50%	19,600	25,600
NET after tax at 50% (sales price less state and federal tax)	73,540	97,540

**Example 2:  
100% Gift of Property**

Assuming appraisal of \$100,000 at 50% tax rate	Tax Savings 39,600 + 525 = \$40,125
Assuming appraisal of \$130,000 at 50% tax rate	Tax Savings 39,600 + 525 = \$40,125

**Example 3:  
Bargain Sale I: 50% Bargain Sale**

Assuming appraisal of:	\$100,000	\$130,000
SALE: 50% fair market value	50,000	65,000
Less 1/2 adjusted basis	1,000	1,000
Capital gain	49,000	64,000

Federal taxable gain at 40%	19,600	25,600
State tax at 7%	3,430	4,480
Federal tax at 50%	9,800	12,800
NET after tax at 50%	36,770	52,200
VALUE OF GIFT:	50,000	65,000
Federal tax saving at 50%	25,000	32,500
State tax saving at 50%	525	525
NET return of \$100,000: at 50% rate	Cash in hand + tax saving = \$36,770 + 26,025 = 62,310	
NET return of \$130,000: at 50% rate	Cash in hand + tax saving = \$52,200 + 33,025 = 85,225	

**Example 4:  
Bargain Sale II: 65% Sale/35% Gift**

Assuming fair market value:	\$100,000	\$130,000
SALE: 65% of fair market value	65,000	84,500
Less 1/3 adjusted basis	1,400	1,400
Capital Gain	\$ 63,600	\$ 83,100
Federal taxable gain at 40%	25,440	33,240
State tax at 7%	4,452	5,817
Federal tax at 50%	12,720	16,620
NET after tax at 50%	47,758	62,063
VALUE OF GIFT:	35,000	45,000
Federal tax saving at 50%	17,500	22,750

State tax saving at 50%	525	525
NET return of \$100,000 at 50% rate	Cash in hand + tax saving = 47,758 + 18,025 = 65,783	
NET return of \$130,000 at 50% rate	Cash in hand + tax saving = 62,063 + 23,300 = 85,363	

**Example 5:  
Bargain Sale III: 65% Gift/35% Sale**

Assuming fair market value appraisal:	\$100,000	\$130,000
SALE: 35% fair market value	35,000	45,000
Less 1/3 adjusted basis	700	700
Capital gain	\$ 34,300	\$ 44,800
Federal taxable gain at 40%	\$ 13,720	\$ 17,920
State tax at 7%	2,401	3,136
Federal tax at 50%	6,860	8,960
NET after tax at 50%:	25,739	33,404
VALUE OF GIFT:	\$ 65,000	\$85,200
Federal tax saving at 50%	32,500	42,600
State tax saving at 50%	525	525
NET return of \$100,000 at 50%	Cash in hand + tax saving = \$25,739 + 33,025 = \$58,764	
NET return of \$130,000 at 50%	Cash in hand + tax saving = \$33,404 + 43,125 = \$76,529	

(Source: Hoose, P.M., 1981)

## Summary

Coastal communities seeking to improve public access to the coast can benefit from a number of cost-effective strategies. These include acquiring fee simple title through donations and bargain sales which also save taxes for the donor or seller, eminent domain, post-flood damage acquisition, and a land transfer tax to finance the purchase of lands for the public. Less-than-fee simple techniques which can open private land to public use include obtaining easements for the public, conservation restrictions, and leasing beachfront property for public use. Under state law, property owners who allow public use of their lands without a fee are not liable for injuries to persons or property due to public use.

The next chapter highlights a number of practical issues which need attention if public access is to be *effective*.



## Further Reading

*Appraising Easements*, A project of the National Trust for Historic Preservation and Land Trust Exchange (1984).

Brenneman, R.L. and Bates, S.M., *Land Saving Action*, Island Press, Covelo, Calif. (1984).

*Gifts of Land for Conservation: Tax Advantages to the Land Owner*, Conservation Law Foundation, 506 Statler Office Building, Boston, MA 02116 (617) 542-0351.

Hoose, Philip M., *Building an Ark: Tools for the Preservation of Natural Diversity through Land Protection*, Island Press, Covelo, Calif. (1981).

*MACC Handbook*, Massachusetts Association of Conservation Commissions, Lincoln Filene Center, Tufts University, Medford, MA.

*Private Opinions: Tools and Concepts for Land Conservation*, Montana

*Land Reliance and the Land Trust Exchange*, Island Press, Covelo, Calif. (1982).

*Tax Deductions for Charitable Giving*, Arthur Andersen Co., Boston, MA (forthcoming 1985).

*The Use of Less Than Fee-Simple Acquisition as a Land Use Management Tool for Coastal Programs*, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

## V. MAKING ACCESS EFFECTIVE

To facilitate full public enjoyment of the coast, attention must be paid to the practical details of making access work effectively. In addition to the provision of boat ramps and municipal beaches, coastal communities should consider *design solutions* for public accessways to and along the water to accommodate pedestrians, cyclists, and the handicapped. In view of limited municipal budgets, alternative ways must be devised to provide for the *maintenance* of public waterfront open space. *Parking and transportation* problems associated with beach access require special attention: road and parking lot capacity rather than beach capacity often determines beach access and use policies in most beach communities.

This final section briefly highlights some aspects of providing public access which warrant careful consideration. Rather than detailed specifications, general areas are described, with examples of some promising practical solutions. References are given in *Further Reading* at the end of this chapter.

### Transportation

The problems associated with transportation and parking for beach and other waterfront recreation derive from two main causes: for most people, getting to good beaches requires a car; and for a number of reasons including resource constraints, beach parking space is inadequate to meet the demand. Other transportation problems include the following:

- Inadequate public transportation to beaches.
- Roads to key beach recreation areas are severely congested at peak periods.
- Most beach communities have implemented beach parking fees which discriminate against non-residents.

- Certain town ways to water are rendered functionally useless through inappropriate prohibitions on parking.
- Because the construction of parking lots adjacent to beaches often destroys important dune systems, it may not be possible to enlarge certain beach parking lots.

One solution is to take advantage of municipal parking lots, such as school lots, and provide a shuttle bus to the beach. A 1982 CZM survey found widespread public interest in such a shuttle bus scheme, with over 70% of those who drive to the beach willing to use a shuttle bus from an inland parking lot. Inland parking lots often make good coastal management sense, since beachfront parking lots are especially vulnerable to storm damage. As one example, the Blizzard of 1978 demolished a parking lot on the Cape Cod National Seashore, built too close to the beach.

### Mixed Uses of the Shore

Another form of public access to the coast that requires attention is access from the *water to the land*. Maritime commerce, transportation and recreation all require docking space, and facilities for repair and storage. Planners should be sure that these water-dependent activities are provided for in waterfront planning. In this regard, the Chapter 91 licensing process may be useful (see Chapter II). For example, transient boat slips might be provided by private marinas.

One aspect of successful access planning is providing for multiple recreational use of the shore. An example: Faced with competition for the beach between swimmers and windsurfer enthusiasts, the Town of Hyannis dedicated a separate part of the beach for windsurfing and boating. The local process of designating use areas could assist windsurfers who often lodge their craft

in saltmarsh grass during seasonal high tides, thereby damaging the marsh.

### Maintenance and Joint Ventures

Effective access can be limited by poor maintenance of public accessways. One innovative approach used successfully in several cities to maintain open space for the public on the waterfront is to enlist the adjacent commercial property owners in the effort. These owners usually share an interest in keeping their surroundings attractive. Each partner could contribute a certain amount to a pool which would finance the necessary maintenance operations, at little or no cost to the municipality.

A related public-private partnership might be to negotiate with waterfront developers or property owners to allow public access to their property on a limited basis, perhaps during certain hours of the day. This can have significant public relations value to the property owner, and may entitle him to other benefits.

To maintain beach property used for public recreation, another approach might be to recruit beachgoers to keep the beach clean.



For example, Plum Island Wildlife Refuge is open for limited recreational use, but the visitor is greeted by a sign which states the "price" of admission to be a bag of trash gathered from the beach.

For shorefront public property which has not been formally declared as a "public park," (which must be free to all), it may be possible for coastal communities to charge nominal user fees to help finance maintenance for public recreation. Under state law, however, the towns may not make a profit on such an undertaking; any excess revenues would have to be placed in the municipality's general fund.

Some waterfront communities may want to explore the willingness of local institutional owners of shorefront property to allow public access to their shores during the peak recreational season. This might be possible for educational institutions who are largely dormant in the summer months.

### Liability

Where private land owners make their property available for public recreation, security and liability will need to be addressed. Fortunately, under M.G.L. ch. 21 s. 17C, there is an automatic limitation of liability of landowners making their land available for recreational purposes. This statute states:

"A private landowner who opens land to public recreational use without a fee is not liable for injuries to persons or property due to public use unless the owner's conduct is willful or reckless."

Finally, one should remember that unrestricted access to coastal areas imposes its own costs on the environment. Sensitive areas such as dunes, salt marshes and estuaries will suffer if public use exceeds a certain threshold. Coastal communities should exercise caution in opening up coastal areas for certain kinds of recreational uses. On the Cape Cod National Seashore, for example, heavy use of off road vehicles was found to cause serious damage to beach grasses, and adversely affected dune formation. Other shore plants and animals are also at risk. If you have

questions about appropriate uses of coastal lands they can be answered by the Coastal Zone Management Office.



Leatherman, Stephen D. and Paul Godfrey. *The Impact of Off-Road Vehicles on Coastal Ecosystems in Cape Cod National Seashore: An Overview*. University of Mass., Environmental Institute, Amherst, MA (1979).

Lynch, Kevin and Gary Hack, *Site Planning* 3rd Edition, MIT Press, Cambridge (1984).

*Managing Vandalism: A Guide to Reducing Damage in Parks and Recreational Facilities*. Parks and Recreation Commission, Public Facilities Commission, Boston, MA (1978).

*The Affordable Coast: A Citizen Action Guide to California Coastal Accessway Management*. California Coastal Commission and State Coastal Conservancy, San Francisco and Oakland, CA (1982).

### **Further Reading**

*A Guide to Designing Accessing Outdoor Recreation Facilities*, U.S. Department of the Interior, Heritage Conservation and Recreation Service, Lake Central Region, Ann Arbor, Michigan (1980).

*Barrier Free Site Design*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Washington, D.C. (1977).

*Bikeway Planning Criteria and Guidelines*, California Department of Public Works, Division of Highways, Sacramento, CA (1972).

DeChiara, Joseph and Lee E. Koppelman, *Site Planning Standards*, McGraw-Hill Book Company, New York (1978).

*Designing Accessways*, California Coastal Commission and the Coastal Conservancy, Sacramento, CA (1982).

*Innovative Management and Funding Techniques for Coastal Accessways*, California Coastal Commission and State Coastal Conservancy, San Francisco and Oakland, CA (1981).

*Layout and Design Guidelines for Small Boat Launching Facilities*, California Department of Boating and Waterways, Sacramento, CA (1980).



# APPENDICES

## 1. Plymouth's Ordinance Establishing a Waterfront District

Zoning Bylaw, Section 401.09, Town of Plymouth, Massachusetts, July 18, 1973

401.09 Waterfront

### A. Intent.

To encourage the development of marine, history or tourism land uses and activities which take advantage of the peculiar characteristics of the waterfront as well as its central location in Plymouth Center and its proximity to the historic area.

To aid in revitalization of the central area by encouraging uses which attract people into the area and generate pedestrian-oriented activity.

To complement the seasonal nature of the waterfront and tourist areas by establishing uses of year-round activity and vitality.

To require special Environmental Design Conditions for special permit uses to insure, among other purposes, proper emphasis on a pedestrian environment, adequate pedestrian links between the proposed development and surrounding properties, high standards of site planning, architectural design which is compatible with the adjoining historic area.

### B. Allowed Uses.

1. Boat sales, service, rentals, ramps and docks; commercial sightseeing or ferrying.
2. Marine railways, repair yards, storage yards, marine supply outlets;



3. Commercial fishing and seafood wholesale or retail outlets and related uses.

### C. Special Permit Uses Subject to Environmental Design Conditions.

1. Restaurants and outdoor eating facilities;
2. Recreational, social, or cultural facilities such as theater, playhouse, bandshell, outdoor pavilion, night club, community center;
3. Hotel, motel, or other tourist related facility;
4. Specialty shopping facilities such as art galleries, gift shops, antique shops, import shops, leather and natural goods stores, as part of a pedestrian-oriented shopping arcade or center; and including uses of a more general commercial nature which do not detract from the purposes of the waterfront and which are necessary to the economic viability of such a complex;
5. Multi-family and single family attached residential provided such complexes are designed not to preclude public access to and along the shoreline.

### D. Prohibited Uses.

1. Industrial uses;
2. General commercial uses not related to any of the stated purposes or activities of the waterfront which would not make appropriate use of its unique potential.

### E. Dimensional and Other Requirements.

1. All uses, premises, and structures should be designed to allow all pedestrian access to and along the shore for a minimum distance of ten (10) feet inland from the mean high water mark;
2. Minimum setback of major structures from mean high water mark shall be twenty-five (25) feet, unless the wetlands designation and regulations of Section 401 02 apply.

## 2. Some Coastal Terms

**Barrier Beach:** A narrow strip of beach and dunes separated from the mainland by a marsh, bay or river. Together the beach and dune comprise a dynamic low-lying system which provides a storm *buffer for harbors, fertile estuaries, and mainland areas behind it.*

**Estuary:** A confined coastal water body such as a harbor, bay or tidal river that is affected by the rise and fall of the tide and contains a mixture of fresh and salt water.

**Saltmarsh:** A coastal wetland extending landward up to the highest tide line and supporting salt-tolerant vegetation. The saltmarsh is an extremely productive natural system that exports large volumes of organic material (detritus) to the ocean and estuaries. The detritus helps support marine food chains.



## 3. Coastal Zone Management Office (MCZM) and Public Access

The Massachusetts Coastal Zone Management Office provides *public access assistance to communities through several programs.* Specifically, MCZM has undertaken to:

- publish a series of access guides to the coast,
- inventory and map coastal resources including recreational areas,
- provide technical assistance in drafting model easements or *planning bylaws for public access,*
- consult with local planners and developers to assure that coastal projects adhere to the MCZM plan, including public access objectives, and
- provide funds for public access improvements through the Coastal Facilities Improvement Program (CFIP).

## Coastal Facilities Improvement Program (CFIP)

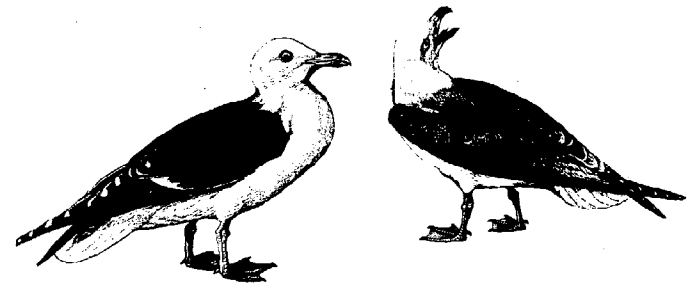
The CFIP is intended to provide financial assistance on a "reimbursable" basis to coastal cities and towns so that they can plan for, construct, reconstruct, maintain and improve their communities up to 50% of the total cost of a project on a dollar for dollar basis up to \$1 million for a single project and not more than \$1.5 million for more than one municipality.

The basic criteria for eligibility for this reimbursement program include:

1. The community must be a "coastal community" as defined in the MCZM Program Plan.
2. The project site must be public (land or property must be owned and maintained by a municipality or by the Commonwealth) and it must be *one* of the following:
  - a. determined to be "substandard" by the Secretary of Environmental Affairs.
  - b. located within a Commercial Area Revitalization District "(CARD)."
  - c. located within a Special Assistance Development Area "(SADA)" as listed in the MCZM Program Plan.
  - d. located within a "Designated Port Area" as listed in the MCZM Plan.
3. The improvement to be made must remain public for the duration of the debt obligation incurred by the Commonwealth (approximately 25 years).
4. The improvement must be related to fishing, shellfishing, marine commerce or industry or for marine recreation, tourism or public access purposes.
5. All necessary permits and licenses must be sought or obtained prior to submitting an application.

## Types of Coastal Improvements

Many types of improvement projects will be allowed under the Coastal Facilities Improvement Program. They include but are not limited to the construction or repair of the following: bulkheads, ripraps, piers, wharves, docks, floats, beaches or other structures used for fishing, marine industry or commerce, marine recreation, tourism or public access purposes. Other allowable facilities include public upland platforms, public buildings containing harbor related facilities for fish handling or storage, parking facilities and walkways necessary for access to a waterfront facility.



## Filing of Applications

Interested communities should contact the MCZM Office to discuss proposed projects prior to submitting applications. Applications must be requested in writing from:

Massachusetts Coastal Zone Management Office  
Coastal Facilities Improvement Program  
100 Cambridge Street - Room 2006  
Boston, Massachusetts 02202  
(617) 727-9530

## 4. Other State Agencies Active in Coastal Access

### The Public Access Board, Department of Fisheries, Wildlife and Recreational Vehicles

Now part of the Department of Fisheries, Wildlife and Recreational Vehicles, since 1962 the Public Access Board (PAB) has funded the construction of some 14 coastal, 9 river and 30 Great Pond facilities for boat launching purposes. While these facilities remain in state ownership, frequently a management agreement is executed between the PAB and the municipality for the operation and maintenance of the facility. These management agreements allow for revenues generated to be used for the upkeep of the facility. All facilities funded by the PAB must be available for public use on a non-discriminatory basis. The PAB may also provide funds for acquisition of public rights of way, construction of parking areas, and for the construction of public trails and walkways to the shore. For more information contact:

Public Access Board  
Department of Fisheries, Wildlife and Recreational Vehicles  
100 Cambridge Street - 19th Floor  
Boston, Massachusetts 02202  
(617) 727-1614

### Department of Environmental Management (DEM)

The Department of Environmental Management has responsibility for acquiring and maintaining state parks, forests, recreational areas and reservations. In particular DEM has extensive funds from Open Space bonds which are designated for coastal access planning, acquisition and development. DEM may be able to provide technical assistance to municipalities to undertake public access improvements. DEM also can provide open space and natural resource planning to enable a municipality to protect future access options.

DEM acquisitions are for property interests held by the state. Frequently arrangements are made to lease back a DEM-owned property to another entity for management. Occasionally DEM may retain a property until an alternative public entity can afford to take over the property. DEM seeks to cooperate with local



governments and non-profit organizations so that they assume responsibility for management of a property, to free state resources for actual acquisition purposes. For more information:

Department of Environmental Management  
Division of Forests and Parks  
Office of Planning and Development  
225 Friend Street  
Boston, Massachusetts 02114  
(617) 727-3160

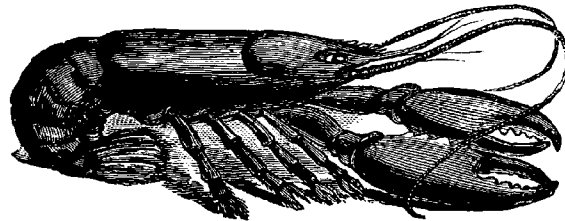
### Office of Conservation Services

Part of the Executive Office of Environmental Affairs, the Office of Conservation Services (CS) administers federal and state grants for local conservation projects. CS administers three programs:

- Self-help
- Urban Self-help
- Land and Water Conservation Fund (Federal).

CS generally funds projects for passive recreation, for acquisition of coastal marshes and sensitive areas, and for beaches. Although CS grant money is provided on a percentage match basis — with CS paying up to 90% of the project under the Urban Self-help program — title to the project remains with the grantee municipality. In most cases the state policy of non-discrimination for public use applies to CS-funded projects. Where federal Land and Water Conservation Fund money is used, a project may be allowed to charge non-residents up to twice the user fee required of residents. For more information:

Conservation Services  
Executive Office of Environmental Affairs  
100 Cambridge Street, 20th Floor  
Boston, Massachusetts 02202  
(617) 727-1614



## 5. Excerpts from Massachusetts Executive Order No. 181: Barrier Beaches

“Barrier Beaches shall be given priority status for self-help and other state and federal acquisition programs and this priority status shall be incorporated into the Statewide Comprehensive Outdoor Recreation Plan. The highest priority for disaster assistance funds shall go towards relocating willing sellers from storm damaged barrier beach areas.”

“At a minimum, no development shall be permitted in the velocity zones or primary dune areas of barrier beaches identified by the Department of Environmental Quality Engineering.”

## 6. Notes on Conservation Restrictions

Under federal law, to qualify for tax deductions, the gift of a conservation easement or “restriction” must be a qualified conservation contribution.” In other words, it must meet three tests:

- a. The restriction must represent a “qualified real property interest;”
- b. The donation must be made to a “qualified organization;”
- c. The donation must be made “exclusively for conservation purposes.”

The first test, a “qualified real property interest,” means that to qualify for federal tax benefits, the restriction must be granted in perpetuity on the property. (Under Massachusetts law the restriction need not be perpetual to qualify for state tax benefits.)

The “qualified organization” referred to in the second test includes government entities including conservation commissions, publicly supported charities, and other special qualifying organizations.

The third test requiring that the donation be made “exclusively for conservation purposes” includes the following:

- Preservation of land areas for outdoor recreation, or education of the general public;
- Protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem;
- Preservation of open space, including farmland and forest land, where such preservation is for scenic enjoyment of the general public, or part of a clearly delineated federal, state, or local government conservation policy;
- Preservation of an historically important land area or a certified historic structure.



## 7. Other Coastal Recreation Information

Massachusetts Department of Environmental Management  
*Massachusetts Outdoors: Statewide Comprehensive Outdoor  
Recreation Plan*. Boston: State Printing Office, 1976.

### *Division of Parks and Recreation*

Department of Metropolitan District Commission  
727-5250. Brochures on MDC parks, beaches and facilities; maps;  
schedules of events.

### *Division of Forests and Parks*

Department of Environmental Management  
727-3180. Locational and natural history brochures; maps; camping  
and parkland rules and regulations.

### *Division of Marine and Recreational Vehicles*

Department of Fisheries, Wildlife and Recreational Vehicles.  
727-3900. Boat and recreational vehicle licenses and registration;  
marine safety education.

### *Division of Marine Fisheries*

Department of Fisheries, Wildlife and Recreational Vehicles.  
727-3195. Information on saltwater fishing and lobster licenses.

### *Division of Tourism*

Department of Commerce and Development  
727-3201. Travel brochures; maps; guides to sites; events,  
restaurants, and accommodation.





Commonwealth of Massachusetts  
Michael S. Dukakis, Governor  
Executive Office of Environmental Affairs  
James S. Boyte, Secretary  
Richard DeLaney, Director, Coastal Zone Management Office