



Office of Long Island Sound Programs
Fact Sheet
for
GENERAL PUBLIC ACCESS TO
COASTAL WATERS

What is General Public Access to Coastal Waters?

General public access to coastal waters, as defined by statute as a “water-dependent uses” [see fact sheet for *Water-Dependent Uses*], includes uses or facilities which provide for recreational use or enjoyment of coastal waters and/or their adjacent shoreline by the general public. General public recreational use and enjoyment includes, but is not limited to: fishing, hiking, boat launching, birding or wildlife observation, and general passive enjoyment of scenic waterfront coastal views and vistas.

When is it most appropriate to incorporate public access into a waterfront development proposal?

As required by the Connecticut Coastal Management Act (CCMA) waterfront sites should, in most instances, be developed with water-dependent uses, unless site specific characteristics prevent such use. In an instance where a site is inappropriate for more active water-dependent uses such as marinas, the creation or enhancement of public access should be a priority. (See fact sheet for *Water-dependent Uses* for more information.)

Generally, coastal public access should be provided where appropriate as a stand-alone water-dependent use and at any waterfront site proposed for non-water-dependent use to make the project consistent with the water-dependent use policies of the CCMA and to mitigate unacceptable adverse impacts of the proposed development on future water-dependent development opportunities. The acceptability of potential adverse impacts should be evaluated based upon a consideration of the:

- site’s unique characteristics including its potential to accommodate a water-dependent development or use;
- effects of the proposed non-water-dependent use on possible future water-dependent development opportunities; and
- consistency of the proposed use with applicable CCMA policies and goals.

The degree to which potential adverse impacts to future water-dependent development opportunities are created by a proposed non-water-dependent use should be determined based upon a consideration of the amount and characteristics of the shoreline proposed to be developed for non-water-dependent uses and the intensity of such use. The following list of potential public

access opportunities and constraints should be considered in determining the type and extent of coastal public access appropriate for the site:

- general site topography including site elevation and contours;
- on-site or adjacent safety hazards;
- water depths;
- presence of sensitive coastal resources and the need to protect them;
- community coastal recreational facility needs;
- neighborhood privacy concerns; and
- views from the site.

Can a commission legally require coastal public access as a condition of coastal site plan review approval?

Yes, when necessary and appropriate to satisfy the water-dependent use requirements of the CCMA. The statutory language found within the CCMA authorizes a municipal planning and zoning commission to require the provision of coastal public access as a condition of coastal site plan approval for the otherwise non-water-dependent use of a waterfront site. This has been confirmed by the Connecticut Supreme Court in the decision *DeBeradinis vs. Zoning Commission of the City of Norwalk* 228 Conn. 187. The Court also found that the imposition of a requirement to provide public access at a site proposed for a non-water-dependent use was not an unconstitutional taking of private property without just compensation.

What is the process for evaluating and siting coastal public access facilities?

General Site Evaluation

- Get a sense of the site - is there potential for providing meaningful public access?
- Confirm information shown on the site plan (e.g., drainage, solar orientation, slopes, soils, hazards).
- Identify existing or potential site attractions (e.g., scenic view, water depths for fishing/boat launching, surficial geology: sandy beach or rocky shorefront).
- Is there evidence of existing public use at the site (e.g., foot paths)? If none, contact local potential user groups (e.g., birding or kayak clubs) to evaluate site's potential.
- Is there enough space to separate public from private use of the site? If not, redesign the project to accommodate public access.
- Are there significant public safety concerns?
- Can site safety constraints and coastal resource protection concerns be overcome through appropriate design (e.g., pedestrian overpasses, fencing, security lighting, etc.)?

- Can the proposed development be redesigned, if necessary, to better accommodate public use?

Locate and Map Potential Site Activity Nodes

- Identify areas appropriate to public and private uses, including areas for parking and access to the site.
- Develop linkages between public use areas and site access points; locate attractions to draw the visitor to the site from a public street or parking area.
- Identify and locate appropriate barriers to separate public from private areas (e.g., fencing, landscape screening).
- Identify links to off-site public areas (e.g., public parks) and barriers to adjacent incompatible uses (e.g., railroads).

Site Signage

- Provide signage design and wording details (e.g., open dawn to dusk) and indicate sign locations. Generally, signs should, at a minimum, be located at the street entrance to the site and, if somewhat distant from the entrance, at the parking area(s). Additional directional signage should be considered if the access area is remote and not obvious from the street entrance.
- Develop a town-wide signage program to promote uniform signage and special sign components (e.g., directional arrows) and to provide prefabricated signs.

Administrative and Legal Items

- To ensure construction, maintenance, and long-term use of public access facilities, modify or conditionally approve the coastal site plan decision to require:
 - *building permits for primary use structures and/or certificates of occupancy be withheld until the access facilities are constructed/open for public use*
 - general public access component(s) as a separate, enforceable condition of approval, even if shown on the application's plans. The decision should specifically reference a description of the public access facilities to be provided;
 - recorded public access easements on land records to ensure permanency of access;
 - maintenance of the public access area and associated amenities and establishment of a mechanism to provide such maintenance (e.g., create a homeowners association public access facilities maintenance account);
 - applicants to post performance bonds, escrow accounts, letter-of-credit (preferred), as authorized by CGS Section 22a-107, to ensure that coastal public access facilities are constructed;
 - markers, as approved by the town planner, designating the boundary of the coastal public access area should be installed every 50 feet along the perimeter of the public open space area;
- Perform follow-up inspections to ensure the access facilities are properly constructed and associated easements are filed prior to issuing certificate(s) of occupancy for the non-water-dependent components of the site development and periodic inspections to ensure

facilities are properly maintained.

Note: CGS Section 52-557f relieves private property owners of liability for injury in most instances when they provide public access on private lands at no charge.

What are the principles of coastal public access site design?

- Make the visiting public feel comfortable and welcome (methods: signage, amenities such as benches, trash receptacles, lighting and parking, if appropriate).
- Separate the public and private portions of the development (methods: plantings, fences, adequate space between public and private activity nodes).
- Design to attract and retain public use of access area (methods: provide sufficient space and amenities such as seating, trash receptacles and parking, if warranted).
- Promote a sense of visitor safety from on- and off-site hazards such as dogs, privacy-conscious neighbors, industrial activities (methods: provide lighting, limit access from dawn to dusk except for fishing access, orient site away from visual distractions, provide vegetated buffers).
- Make access to area easy (methods: on- or near-site parking; connect site walkways to public sidewalks, provide gentle slopes).

What can a municipality do to promote coastal public access?

- Amend the Plan of Conservation and Development and Municipal Coastal Program, if applicable, to specifically identify both areas where coastal public access is particularly needed and the types of access facilities in greatest demand.
- Amend the zoning regulations to specify municipal authority and criteria to specifically require water-dependent uses including coastal public access through the coastal site plan review process, as already provided in the CCMA.
- Direct applicants for waterfront projects to meet with town planning and zoning staff prior to formal application for coastal site plan review approval to review the CCMA's water-dependent use requirements. The purpose of such meetings should be to explore whether a site is suitable for active water-dependent uses, and if not, how proposed non-water dependent uses of waterfront sites could be modified to incorporate meaningful water-dependent use components. Such meetings could also address concerns about the perceived effects of providing coastal public access (i.e., public access can be designed at "neighborhood scale"; time of access limited to dawn to dusk except where fishing access is appropriate, landowner liability is limited by statute, etc.).
- Make this fact sheet available to the public and the planning and zoning office.