

Shoreline Public Access Plan Guidelines

Introduction

Delaware's ocean and bay beaches are vital public resources that support public recreation and economic development and provide natural storm damage protection to beachfront communities. In order for these assets to be considered for state and federal funds for the support of their nourishment, maintenance, and management, it is essential that appropriate measures are undertaken to ensure adequate public shoreline access.

To provide consistency among public access across Delaware's shoreline communities, DNREC's Division of Watershed Stewardship, Shoreline and Waterway Management Section (SWMS) has developed these Shoreline Public Access Plan Guidelines (Guidelines) to assist communities in creating a public access plan. The Guidelines establish a framework for assessing and documenting plans to establish and maintain public access to Delaware's shorelines, particularly where public funds are used for upkeep and improvement.

While adoption of a Shoreline Public Access Plan (Access Plan) does not guarantee that nourishment will occur on a specific schedule or scale, the approval of and the content of the plan will be used in consideration of any project funded by DNREC and/or the U.S. Army Corps of Engineers (USACE).

Purpose of the Guidelines

The purpose of these Guidelines is to provide shoreline communities with information on how to create Access Plan that addresses existing public access conditions and plans for future updates in consensus with any federal and state requirements. These Guidelines establish a consistent framework for communities to develop Access Plans that balance recreational use,

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environmental protection, and long-term sustainability of Delaware's coastal resources.

For creation of the Access Plan, a shoreline community (Community) is defined as any local entity taking responsibility for establishing and/or maintaining public access and developing the Access Plan, for stretches of shoreline that would benefit from a publicly-funded nourishment project (Nourishment Project). This can be in cooperation with DNREC. These entities may include, but are not limited to, municipalities (local or county), HOAs, other associations, or collections of residents.

Regulatory Authority

Federal Authority – U.S. Army Corps of Engineers (USACE)

Under Section 103(d) of the Water Resources Development Act of 1986, federal funding cannot be used for beach nourishment at privately-owned beaches that restrict use to private interests. As a condition of Nourishment Projects, USACE requires that shorelines receiving nourishment provide public access, which is documented in Nourishment Project specific feasibility reports and agreements. In general, the USACE requires shoreline access every 1/4mi and adequate parking.

State Authority – Delaware Public Access Requirements

As the non-federal sponsor for federally-funded Nourishment Projects, the State of Delaware must ensure compliance with federal public access requirements. The SWMS will meet that responsibility through the development of individual Access Plans, which will also need to be maintained for consideration for future Nourishment Projects.

Additionally, Delaware's Public Trust Doctrine affirms that the State holds navigable waters and the lands beneath them in trust for the benefit of the public such that the public retains the right to use Delaware's tidal waters, and a portion of its shores, for traditional purposes such as navigation,

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fishing, and recreation. The doctrine also establishes the State's duty to protect, maintain, and regulate public access in perpetuity.

Access Plan Guidelines

a. Goals:

The goals of the Access Plans are to:

- i. **Ensure Equitable Public Access:** Guarantee that federal and state-funded nourished shorelines remain accessible to the public and ensure that swimming, fishing, boating and other water-oriented activities along these shorelines are available to all residents and visitors equally.
- ii. **Maintain Public Infrastructure:** Safeguard public infrastructure to ensure that facilities such as parking, signage, and restrooms is available are available and visible.
- iii. **Protect Natural Resources:** Protect sensitive natural resources, including dunes and wildlife habitat, and minimize ecological impacts.
- iv. **Establish Long-Term Access:** Establish clear, permanent mechanisms—such as easements, ordinances, or conservation restrictions—to safeguard access for future generations.
- v. **Foster Coordination:** Promote coordination among communities, DNREC, and USACE to meet state and federal access requirements, ensuring effective management and sustainability of coastal resources.

b. Access Plan Content:

A Community shall create a Plan that includes the following elements:

- i. **Introduction statement-** Describe the overall goal of the Access Plan and the administrative mechanisms (for example, conservation restrictions, easements, ordinances) that either are already in place, or that shall be put in place to ensure that the shoreline will provide permanently-protected access to the water and water-dependent and

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water-oriented activities along all tidal waterways and their shores within a proposed or expected Nourishment Project boundary. If the Access Plan proposes to provide access to the same waterway outside of Nourishment Project boundaries through a joint effort with another Community, the statement shall include a description of the administrative mechanisms that will ensure access through that effort will be permanently protected.

ii. **Public Access Assessment-** Evaluate existing public access, including but not limited to:

1. Existing access points or locations providing perpendicular access to tidal waterways and their shores and signage used to locate them (crossovers, boat ramps, etc.).
2. Existing water-dependent and water-oriented activities that facilitate public access (bathroom facilities, lifeguard beaches, parking etc.).
3. Practical limitations to public access such as insufficient restroom or parking, including restriction on availability or duration that may limit public use.
4. Existing and proposed public ordinances/regulations or other programs that impact public access or ensure reasonable access to water and water-oriented activities.
5. Existing information or data regarding access needs (visitation numbers, parking tags issued, etc.).

iii. **Map and inventory-** Provide a map and inventory that includes:

1. All tidal waterways and adjacent lands within the Nourishment Project boundary; and all lands held by the Community if applicable.
2. All existing and proposed public accessways, including streets, roads, paths, trails, easements, paper streets, dune

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walkovers/walkways/crossovers, and public-dedicated rights-of-way

3. All existing and proposed public access facilities, including, but not limited to: public accessways located parallel to the shoreline with perpendicular access; boat ramps, piers, or other direct access to the waterway; sitting/observation areas; public restrooms; off and on-street parking, and residency or other restrictions to parking and associated fees.
4. Identification of facilities identified in the above requirements that are compliant with the Americans with Disabilities Act (ADA) of 1990.

iv. Access Plan Implementation strategy- Create a strategy for improving and maintaining access that shall:

1. Describe public access activities and facilities that are being proposed to meet the needs identified in the access assessment. Address, at minimum, the following areas:
 - a. Waterway Access & Amenities
 - i. Public access for swimming, fishing, boating, and other water-dependent or water-oriented activities.
 - ii. Publicly available supporting amenities such as parking, bathroom facilities, pathways, and public transportation, to the extent practicable.
 - iii. Compliance with applicable ADA standards for accessibility to the greatest extent practicable.
 - b. Signage
 - i. Installation and maintenance of public access signage at shoreline access points

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- ii. Installation and maintenance of public parking signage and information on location, restriction, and availability.
 - c. Environmental Stewardship
 - i. Protection of sensitive habitats while maintaining public access.
 - ii. Projects/Initiatives: Create a table of current and proposed projects and initiatives with a minimum five-year schedule.
- 2. Identify tools to implement the strategy.
 - a. Propose modifications of existing plans, ordinances, and programs as needed.
 - b. Identify maintenance of existing assets and programs.
 - c. Include costs, estimates, and funding sources.
 - d. Include a schedule of implementation.
- 3. Address Public Engagement:
 - a. Identify ways in which the content of the Access Plan will be communicated to residents/tenants of the Community and beach visitors (rental agreements, newsletters, etc.).
 - b. Document public meetings, emails, flyers, and comments received regarding the Access Plan.
 - c. Ensure engagement is inclusive and reflects diverse community needs.
- 4. Provide examples and/or model(s) of existing and proposed conservation easements/restrictions that preserve all public access identified in the Access Plan, to protect the access in perpetuity (if applicable).

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5. Include a draft resolution for incorporating the Access Plan into a master plan element (for example, the land use, recreation, and/or conservation plan element) if applicable.

c. **Access Plan Review, Updates, and Approval:**

SWMS shall review Access Plans submitted by Communities (to the SWMS office) to determine whether the Access Plan outlines public access consistent with State and federal requirements for provision of continued shoreline nourishment funding.

- i. SWMS will review submitted Access Plan for consistency with goals, public access objectives, and statutory requirements.
- ii. SWMS will work with the Community to address points that are not consistent. After comments have been addressed, the Access Plan will be approved by SWMS.
- iii. Communities must submit a status update every five years on all Shoreline Access Plans.
- iv. Communities must submit proposed changes that affect the Access Plan within 90 days for DNREC review.
- v. Failure to implement the Access Plan or maintain access in concordance with the Access Plan will jeopardize the ability for Communities to be considered for future nourishment funding.