



6 Sunset Avenue  
Niantic, CT 06357

## **Black Point Beach Club Association**

### **Policy Relating to Construction and Improvements Requiring Access Over, Undertaken Upon, or Impacting BPBCA Property**

#### **Section 1. Purpose & Applicability:**

The purpose of this policy, and the attached temporary license agreement, as adopted by the Board of Governors of the Black Point Beach Club Association (the “Board”), is to provide the Black Point Beach Club Association (“BPBCA”) with standards for the review, approval, and performance of any activity, construction and/or improvements undertaken by or on behalf of a Member of the BPBCA, for purposes of improving a Member property, that requires access over, takes place on, impacts, improves, or otherwise affects BPBCA property.

#### **Section 2. Definitions:**

Approval - The completed submission of the application defined in Exhibit “A” with all supporting requirements as defined by this policy, and formal approval by the Board.

Access Supervisor - That independent qualified person (non-Board member) or third-party entity, designated by and reporting to the Board, to administer and enforce the policy.

Association Manager - Person or entity who oversees the operation and maintenance of all common property of the BPBCA.

Board - The governing body of BPBCA as determined by its charter and bylaws, as amended.

BPBCA Property - That property, real and personal, which is owned or leased by, or is dedicated by a recorded deed to the BPBCA for the use and benefit of its Members. For the sake of clarity, this includes, but is not limited to, accessways; beaches; parking lots; walkways; boat launches, buffer strips, and specifically including the following BPBCA Properties as described on the map made by Daboll & Crandall, received for filing May 27, 1931, as amended, and placed on file in the Town Clerk’s Office in the Town of East Lyme, Connecticut:

- 6 Sunset Avenue – lots 1059 – 1065 are the land identified as “Woodland Park and Playground.”
- 65 Nehantic Drive – lots 738 – 740, presently the “Tennis Courts”
- 8 Whitecap Road – lots 270 – 272, presently the “Parking Lot”
- Beach Properties identified as “Reserved Beach” and Parcel ID 5.11 / 71 and 5.2 / 67 by the Town of East Lyme Assessor
- Old Black Point Road shoreline property identified as Parcel ID 5.1 / 7 by the Town of East Lyme Assessor
- Accessways east of East Shore Drive identified as Billow Road, Bellaire Road, Nehantic Drive, Cahill Way, White Cap Road, Sea Breeze Road, Seaview Avenue, Sea Crest Avenue, Sea Spray Avenue, Saltaire Avenue, Brightwater Road, Osprey Road, and Blue Heron Road. Access way between Sea View Avenue and Sea Crest Avenue,

east of Sunset Avenue, and Waterside Drive parking spaces. Included is the one-foot buffer strip owned by BPBCA that abuts Member properties as identified in the property deeds.

Covered Work - The construction and/or improvements undertaken by or on behalf of a Member that requires access over, takes places on, impacts, improves, or affects BPBCA Property.

Impacts BPBCA Property - Any activity or alteration of the preexisting topography, landscaping, and/or other structures which is likely to cause subsidence, instability, erosion, sedimentation, or damage to structures or landscaping, uneven terrain, or any other condition which renders BPBCA Property less safe, less stable, less useable, or less aesthetically pleasing than pre-construction conditions.

Member - A person having all the rights of membership in the BPBCA as determined by its charter and bylaws, as amended.

Member Property – Property within the BPBCA that is owned by a Member.

Performance Bond - The term “Performance Bond” shall refer to the following method of assuring completion of the Covered Work: Cash in the form of a certified check, a passbook, an equivalent bank issued Letter of Credit, or if the Covered Work is in excess of twenty thousand dollars (\$20,000), a surety bond that is satisfactory to the Access Supervisor, assigned to the BPBCA by assignment form prescribed by the Board’s legal counsel.

Special Meeting – A meeting conducted by the Board to timely address BPBCA business items, as solely defined by the Board, incremental to regular scheduled meetings.

Zoning Enforcement Officer: The person who administers and enforces all BPBCA zoning regulations as described in Section III and Section VIII of the BPBCA Zoning Regulations.

### **Section 3. Written Request By Member to Perform Covered Work:**

Covered Work includes work located on Member Property that requires access over, takes place on, impacts, improves, or affects BPBCA Property, with the purpose being to improve Member Property. Covered Work does not include basic maintenance of grass, hedges, shrubs, fences, minor re-pointing of walls, or other similar landscaping works.

*Please note that the Member, prior to compiling and submitting an application to the Board, is required to meet with the Access Supervisor to discuss the project in detail. If this meeting demonstrates feasibility and warrants an application, as determined by the Access Supervisor, the Member shall submit plans and supporting details to the Board for review and approval as outlined in Exhibit A. The Access Supervisor reserves the right to bring in other resources as needed for this feasibility meeting. The purpose here, for the sake of clarity, is to avoid both Members and BPBCA incurring costs before feasibility has been confirmed.*

To submit the written request for covered work, the Member must contact the Access Supervisor and complete the following:

- (a) Complete the application attached hereto as Exhibit A. This application must also include any site plans and/or buildings plans required for zoning approval, if applicable. Also, a detailed written description of the proposed Covered Work, including a construction timeline.
- (b) For Covered Work that is proposed adjacent to BPBCA Property, the written application shall include an explanation of any anticipated impacts on existing BPBCA parking, pedestrian walkways, boating launches, beaches, access ways, or buffer strips if adjacent to or abuts Member property. To the extent impacts are anticipated, the Member shall provide the Board with proposed measures to mitigate any impacts on Member access to and over the BPBCA Property.
- (c) If BPBCA Property must be altered to perform the Covered Work, a detailed description of how the BPBCA Property will be impacted must be provided. The Application should include an estimate of the cost, for bonding purposes, to return the BPBCA Property to its pre-construction condition just prior to commencing any Covered Work, or to a condition acceptable to the Access Supervisor and Board (photographs of existing conditions shall be included for reference- see Exhibit A for requirements).
- (d) If required by the Access Supervisor or any Governing body, a set of plans showing the proposed Covered Work, stamped by a Connecticut licensed professional engineer, surveyor, and/or architect as applicable.
- (e) A list of all local, state, and federal approvals and/or permits required for the proposed Covered Work, and the status of such permit applications.
- (f) The Member must submit the complete application, with all relevant details outlined above, to the Board at least two weeks prior to a regularly scheduled Board meeting. The member is also required to attend the Board meeting to address any questions or concerns the Board may identify.

#### **Section 4. Board Action:**

- (a) The Board will review a completed application at the next regularly scheduled meeting, provided that a completed application has been submitted at least fourteen days prior to that regularly scheduled meeting. If it is determined at that preliminary review, that additional materials are required, a subsequent meeting will be scheduled in consultation between the Board and Applicant. In case of emergency Covered Work, a Special Meeting will be scheduled and conducted in accordance with Article III of the BPBCA Bylaws.
- (b) The Board shall have the discretion to request additional information and/or modifications to the application materials if, in the Board's opinion, the application materials do not contain the information needed to allow the Board to decide on the application. In certain circumstances, due to the nature or complexity of the Covered Work on BPBCA Property, the Board reserves the right to hire a Connecticut Licensed engineer and/or architect or surveyor to conduct a third-party review of the proposed design and construction methodology of the Covered Work. The cost of this third-party review, if requested to ensure that the BPBCA is properly protected, shall be borne by the Member applicant

subject to Member pre-approval thereof. Refusal of the Member to agree to reimburse the BPBCA for such third-party review shall be grounds for denial of the request.

- (c) The Board shall have the authority to impose specific conditions on the approval of any request made under this policy to protect BPBCA Property and the interests of BPBCA Members.
- (d) If the application in Exhibit A is granted Approval per this policy, a Temporary License Agreement in the form of Exhibit B will be issued, with a condition requiring that the BPBCA Property be returned to pre-construction or improved condition when the Covered Work is complete.
- (e) No Covered Work is to be commenced or performed without the final written Approval of the Board, and the Board as appropriate has granted a temporary license to the Member. The temporary license shall be executed by instrument, in form and substance as per Exhibit B attached to this policy.
- (f) The Access Supervisor, on behalf of the Board, may conduct on-going inspections of the Covered Work, up through and including final completion as defined in Section 12 & 13.

### **Section 5. Permits for Covered Work:**

No Covered Work shall commence until all necessary local, state, and federal permits, including any approvals needed under the BPBCA's Zoning Regulations, are obtained by the Member seeking to perform the Covered Work, and submitted to the Access Supervisor with copies for the BPBCA Secretary and Zoning Enforcement Officer. The Member seeking to perform the Covered Work shall be responsible for all costs associated with obtaining the permits and approvals.

### **Section 6. Contractors to Perform the Covered Work:**

- (a) The Member seeking to perform the Covered Work shall have the sole responsibility of hiring a contractor to perform the Covered Work. All contractors shall be licensed by the State of Connecticut and carry appropriate insurance (as provided in Section 8 below) throughout the duration of the construction.
- (b) All contractors must perform the Covered Work in a professional and skillful manner and shall not alter or adversely affect the BPBCA Property beyond what is expressly allowed in the Approval.
- (c) The Member and its contractor(s) shall meet with the Access Supervisor prior to commencing construction. The Access Supervisor reserves the right to bring in other resources as needed for this meeting.
- (d) All contractors shall park and store equipment and materials as directed by the Access Supervisor in coordination with the Association Manager.
- (e) Each contractor's status shall be that of an independent contractor and shall not be, or construed to be, an agent or employee of the BPBCA or the Board, and no contractor or Member shall negotiate any contracts or commitments on behalf of the BPBCA or the Board.
- (f) All costs associated with contractors to perform Covered Work shall be the responsibility of the Member.

**Section 7. Responsibilities of the Member and Contractor During Construction:**

- (a) No construction materials or construction equipment shall be stored on BPBCA Property without prior consent from the Access Supervisor in coordination with the Association Manager and shall remain located on BPBCA Property only for the duration specifically approved by the Access Supervisor in coordination with the Association Manager.
- (b) It shall be the responsibility of the contractor to secure and dispose of all construction-related trash and debris located upon BPBCA Property at the conclusion of each workday.
- (c) All construction shall be performed on weekdays only, and only between the hours of 8 a.m.- 6 p.m. Upon written approval of the Access Supervisor, in coordination with the Association Manager, the days and hours may be altered for emergency circumstances or where it is otherwise beneficial to the BPBCA or its Members.
- (d) No construction shall take place that impacts BPBCA Property, without prior written approval from the Access Supervisor, between Memorial Day and Labor Day of any year. Upon written approval of the Access Supervisor, in coordination with the Association Manager, these restrictions may be altered for emergency or certain circumstances where it is otherwise beneficial to the BPBCA or its Members.
- (e) No Member or its contractor shall perform any activities that deviate from the Approval, or that will materially and adversely affect BPBCA Property, nor work in any area outside the approved Covered Work area without the prior approval of the Access Supervisor, or as otherwise required by applicable law.

**Section 8. Insurance:**

At all times during construction, the Member or their contractor(s), at the Member's sole cost and expense, shall procure and maintain in effect commercial general liability insurance and worker's compensation insurance with a financially responsible insurance company that is nationally recognized by Moody's, The Better Business Bureau, or an equivalent acceptable to the Board covering (a) all work to be performed on BPBCA Property, and (b) the indemnity obligations as set out in Section 9.

Said insurance policy shall name BPBCA as a named insured party with a combined single per occurrence limit of at least \$1 million, along with worker's compensation insurance as required by applicable law.

Prior to the commencement of any Covered Work, the Member shall provide the Board with said certificate of insurance(s).

**Section 9. Indemnification:**

The Member, and the Member's contractor(s), shall indemnify, defend and hold harmless the BPBCA and the Board from and against any and all claims, causes of action, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) suffered or incurred by the BPBCA or the Board arising out of (a) any work undertaken by or on behalf of the Member; (b) acts or omissions of the Member or their contractor(s), employees, and agents; and/or (c) any change in design of the Covered Work contained in the Approval.

**Section 10. Bonding:**

If the Covered Work has the potential for adverse damage to BCBPA Property, as determined by the Access Supervisor, the Member shall post a Performance Bond for the estimated full restoration cost of BPBCA Property, plus an additional 15% for contingencies. The Performance Bond to repair or restore BPBCA Property shall be accompanied by a current written estimate from the engineer and/or other licensed professional who prepared the plans for the Covered Work, with said amount reviewed and accepted by the Access Supervisor.

The Member shall post any required Performance Bond prior to the commencement of any Covered Work. The Performance Bond will be returned to the Member upon full restoration of BPBCA Property to the satisfaction of the Access Supervisor.

If the Performance Bond, as requested by the Access Supervisor, is not posted by the Member, the Access Supervisor shall have the authority to void the permission for Covered Work, deny access to BCBPA Property, or take any other appropriate action as determined by the Access Supervisor.

**Section 11. Project Costs and Responsibility:**

The Member seeking to perform the Covered Work shall be solely responsible for paying all costs associated with the permitting and construction of the Covered Work, including but not limited to, all costs of labor, project management and inspections, supplies, materials, transportation, and equipment charged by or to their contractor(s), application fees, public notice fees, engineering, site plans, and waterfront development consultants.

**Section 12. Compliance with Local, State and Federal Laws:**

All work subject to this policy shall be performed in compliance with the BPBCA's Charter, Bylaws and Zoning Regulations, as well as in compliance with all applicable other local, state, and federal laws.

The Access Supervisor shall have responsibility for confirming that all permits, insurances, bonding (if required), and contractor licenses are in place prior to commencing any work on BPBCA Property, and the Access Supervisor shall notify the Board that all such permits and licenses are properly in place. The Access Supervisor may monitor all work progress and in the event of any necessary amendments or changes to the original Approval, the Access Supervisor shall notify and review any such changes with the Board for approval. The Access Supervisor shall have the authority to halt work on the project, subject to Board Approval, if any work is not in conformance with this policy or the Approval of the Covered Work.

**Section 13. Project Commencement and Completion:**

- (a) The Member shall provide written notice to the Access Supervisor at least fifteen (15) days prior to the commencement of the Covered Work, unless otherwise approved by the Access Supervisor for emergency circumstances.
- (b) The Member shall also provide written notice upon completion of the Covered Work to the Access Supervisor. For Covered Work on BPBCA Property (*e.g.*, not on Member Property), the Member's completion notice shall be accompanied by the design engineer's



letter of completion and any As-Built diagrams required by federal, state, or local permitting agencies. The Access Supervisor may conduct an inspection to confirm the Covered Work was performed in accordance with the application Approval and may require “As-Built” drawing(s) of Covered Work. A certificate of completion, as per Exhibit C, will be issued upon full BPBCA Property restoration to the satisfaction of the Access Supervisor.

- (c) Upon completion, the Member shall submit lien waiver(s) executed by any contractors, engineers, or other consultants, who performed and/or supported the Covered Work , to evidence that the Member has satisfied all invoices. A copy of the lien waiver form is attached as (Exhibit D).
- (d) In the event construction has commenced but has failed to be completed by the Member within the approved timeline, or in the event the Member and/or their contractor(s) can no longer perform the Covered Work, unless otherwise approved by the Access Supervisor, the Access Supervisor will issue a failure to complete notice as per the attached (Exhibit E).
- (e) The Member, upon receipt of such notice, will be provided a fourteen (14) day cure period to complete the Covered Work per the Approval, or if unable to finish due to weather conditions or other circumstances beyond the control of Member, provide a Performance Bond, if required by the Access Supervisor, for the remaining Covered Work.
- (f) If after the 14-day cure period the Covered Work remains incomplete, the Board reserves the right to retain a successor contractor to perform the Covered Work, at the sole expense of the Member, and/or to call the Performance Bond to pay for the completion of the Covered Work on BPBCA Property.
- (g) Failure to return BPBCA Property to pre-construction or better condition will result in a delayed Certificate of Completion from the Access Supervisor and/or Certificate of Zoning Compliance to obtain a Certificate of Occupancy from Zoning Enforcement Officer, until reparations have been satisfactorily addressed at the Member’s expense.

#### **Section 14. Waivers:**

The Board may, in its sole discretion, waive any requirement of this policy upon any finding that the granting of the waiver such will not adversely impact BPBCA Property and/or the interests of BPBCA Members, or as necessary due to an emergency circumstance.

#### **Section 15. Modification:**

If, after the granting of an application Approval, the Member becomes aware of the need to make a modification to the Covered Work, the Member must immediately provide written notice to the Access Supervisor. If the Access Supervisor determines the modification is significant, the Member and/or contractor will refrain from conducting any activities that conflict with the Approval until the Board approves the requested modification. The Member must submit sufficient written information, as an amendment to the original application defining Covered Work. Said amended application, along with any engineering and permitting agencies approval, must be submitted to the Access Supervisor within fourteen days of expected works, such that the Access Supervisor can accurately assess and advise the Board on the modification request. The Board’s action on any modification requests shall be the same as on original requests, as stated in Section 4, above.

**Section 16. Administration:**

Upon Approval, the Member should email digital copies of the complete application to the entire Board, along with four (4) hard copies of the approved application, one each as follows: Access Supervisor; BPBCA Secretary; Signed copy returned to the Member; Hard copy for BPBCA Board.

**Section 17. Permit Fees:**

A Permit processing fee in administration of this policy will be **\$150.00** per transaction.

Checks are to be made out to the Black Point Beach Club Association. When any use, construction, erection, or modification requiring an Approval is commenced prior to obtaining Approval by the Access Supervisor, the fee for making said application for Approval shall be three times the amount otherwise applicable under this section.

The Member shall mail or deliver the completed application and permit fee to the Access Supervisor at the following address: Black Point Beach Club Association, 6 Sunset Avenue, Niantic, CT 06357 or contact the Access Supervisor to arrange deliver/pick up at the BPBCA Clubhouse.