

NOTE: In the spirit of Governor Chris Christie's Executive Order No. 2, this document is provided as a DRAFT of a proposed rule. Comments will be accepted through Wednesday, September 1, 2010 (email Marybeth.Brenner@dep.state.nj.us). The Department subsequently will submit its official proposed rule for publication in the *New Jersey Register*, triggering the 60-day public comment period and any public hearings. This pre-proposed rule comment period is in addition to, not in place of, that 60-day period.

ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF LAND USE REGULATION
Coastal Zone Management
Public Access

Proposed Amendments: N.J.A.C. 7:7-7.5 through 7.14, 7.17, 7.18, 7.24, 7.26, 7.29;
N.J.A.C. 7:7E-1.8, 3.22, 3.23, 3.43, 3.48, 3.50, 8.11 and 8A

Authorized by: Bob Martin, Commissioner, Department of Environmental Protection
Authority: N.J.S.A. 13:19-1 et seq.; 12:3-1 et seq., 12:5-3, 13:9A-1 et seq.;

DEP Docket Number:

Proposal Number: PRN 2010-

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

N.J.A.C. 7:7 Coastal Permit Program Rules

7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. **"Amusements" also means bar and restaurant establishments and entertainment venues such as stage and band shells**

and associated seating areas. "Amusements" do not include games for cash payoffs[, bars or restaurants].

...

7:7-7.5 Coastal general permit for amusement pier expansion

(a) This coastal general permit authorizes the expansion of an existing, functional amusement pier as defined at N.J.A.C. 7:7-1.3, provided that the expansion complies with the following:

1.-9. (No change.)

10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(b) (No change.)

7:7-7.6 Coastal general permit for beach and dune maintenance activities

(a) This coastal general permit authorizes beach and dune maintenance activities provided:

1.-2. (No change.)

3. Public access to the beach shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(b) (No change.)

7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development

(a) This coastal general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development provided:

1.-7. (No change.)

8. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(b) (No change.)

7:7-7.8 Coastal general permit for the development of a single family home or duplex

(a)-(f) (No change.)

(g) Except as provided in (g)1 below, public access shall be provided in accordance with the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

1. In accordance with N.J.A.C. 7:7E-8.11[(f)6], the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(h)-(o) (No change.)

7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion), of a single family home or duplex

(a)-(f) (No change.)

(g) Except as provided in (g)1 below, public access shall be provided in accordance with the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

1. In accordance with N.J.A.C. 7:7E-8.11[(f)6], the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(h)-(o) (No change.)

7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon

(a) This coastal general permit authorizes the construction of a bulkhead on a lot located on a substantially developed manmade lagoon, provided that the bulkhead complies with the following:

1.-6. (No change.)

7. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule,

N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

(b) (No change.)

7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot

(a)-(b) (No change.)

(c) Except as provided in (c)1 below, public access shall be provided in accordance with the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

1. In accordance with N.J.A.C. 7:7E-8.11[(f)6], the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(d) (No change.)

7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot

(a)-(b) (No change.)

(c) Except as provided in (c)1 below, public access shall be provided in accordance with the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be

imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

1. In accordance with N.J.A.C. 7:7E-8.11[(f)6], the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(d) (No change.)

7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating marinas

(a)-(b) (No change.)

(c) The construction of support facilities listed at (b)1 through 7 above shall also comply with the following:

1. (No change.)

2. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11;

3.-5. (No change.)

(d) (No change.)

7:7-7.14 Coastal general permit for reconstruction of a legally existing functioning bulkhead

(a) (No change.)

(b) The reconstruction of a legally existing bulkhead as described in (a) above is acceptable provided that:

1. (No change.)

2. Except as provided in (b)2i below, public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

i. In accordance with N.J.A.C. 7:7E-8.11[(f)6], the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

3.-7. (No change.)

(c) (No change.)

7:7-7.17 Coastal general permit for the construction of recreational facilities at public parks

(a) (No change.)

(b) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(c) (No change.)

7:7-7.18 Coastal general permit for bulkhead construction and placement of associated fill

(a) This coastal general permit authorizes the construction of a bulkhead and associated fill at a single family/duplex lot on a natural water body provided that the proposed bulkhead complies with the following:

1.-10. (No change.)

11. Except as provided in (a)11i below, public access shall be provided in accordance with the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Additional requirements may be imposed as a condition if Shore Protection Program funding is utilized, pursuant to N.J.A.C. 7:7E-8.11(p).]

i. In accordance with N.J.A.C. 7:7E-8.11[(f)6] , the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(b)-(c) (No change.)

7:7-7.24 Coastal general permit for the legalization of the filling of tidelands

(a) This coastal general permit authorizes the legalization of the filling of any lands formerly flowed by the tide provided:

1.-2. (No change.)

3. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11;

(b)-(c) (No change.)

7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

(a) This coastal general permit authorizes the construction of structures such as equipment storage containers and sheds, stage platforms, bleachers, portable restrooms, food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments and multi-family residential developments over 75 units provided **that**:

1. **With the exception of the following**, [The] **the** structure remains in place only from May 1 through October 31;

i. **Underground utilities, floor decking, open drink and food concession stands shells, and stage shells may remain in place on a year-round basis;**

ii. **All structures except underground utilities shall be immediately removed from the beach and relocated to a secure place at any time that the Governor or Federal, County, or local Emergency Management Coordinator declares a State of Emergency during significant weather events and natural disasters affecting the municipality in which the development is located, until the State of Emergency is lifted.**

2.– 8. (No change.)

9. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11; and

10. Where the structure(s) is located on a beach, [on or prior to April 1 of each year, and] for each year of the duration of the permit, the permittee shall submit to the Department, **on or prior to April 1 of each year**, for its review and approval, three copies of a revised site plan, dated no more than 30 days prior to the submittal, including supplemental documents as appropriate, showing:

i. – ii. (No change.)

(b) – (c) (No change.)

7:7-7.29 Coastal general permit for habitat creation and enhancement activities

(a)-(e) (No change.)

(f) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(g)-(h) (No change.)

7:7E Coastal Zone Management Rules

7:7E-1.8 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

...

"Homeland security development" means a facility with a Federal or State homeland security interest and may include, but is not limited to a chemical or metallurgical industrial facility, marine terminal or transfer facility for waterborne cargo, airport, railroad yard, certain energy facilities, military facility, or the regulated portion of a facility regulated pursuant to the Spill Compensation and Control Act (N.J.A.C. 58:10-23.11 et seq.), or a facility performing a process regulated pursuant to the Toxic Catastrophe Prevention Act (N.J.A.C. 13:1K-19 et seq.). The Federal Office of Homeland Security and Preparedness assists the Department in determining which specific facilities meet this definition.

...

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

...

"Natural area" means an area that has retained its natural character, as evidenced by the presence of woody vegetation (trees, saplings, scrub-shrub vegetation) or rare or endangered plants. A disturbed area may be considered a natural area if such vegetation is present. A natural area does not include maintained lawns or areas landscaped with non-native herbaceous plants.

...

"Public development" means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. "Public development" does not have to be publicly funded or operated.

...

"Residential development" means a development that provides one or more dwelling units.

7:7E-3.22 Beaches

(a)-(b) (No change.)

(c) Public access shall be provided in accordance with the lands and waters subject to public trust rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(d) (No change.)

7:7E-3.23 Filled water's edge

(a)-(h) (No change.)

(i) On all filled water's edge sites, development must comply with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(j) (No change.)

7:7E-3.43 Special urban areas

(a)-(b) (No change.)

(c) Housing, hotels, motels and mixed use development, which is consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, the public trust [rights] **access** rule, N.J.A.C. 7:7E-8.11, and the Hudson River Waterfront Area rule, N.J.A.C. 7:7E-3.48, where applicable, are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1.-3. (No change.)

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the filled water's edge rule at N.J.A.C. 7:7E-3.23 and public access is provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

(e) (No change.)

7:7E-3.48 Hudson River Waterfront Area

(a)-(b) (No change.)

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Zone Management rules with particular attention given to N.J.A.C. 7:7E- 3.40, Public open space, N.J.A.C. 7:7E-3.41 Special hazards areas, N.J.A.C. 7:7E-3.43 Special urban areas, N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights, N.J.A.C. 7:7E-7.14 High rise structures, [N.J.A.C. 7:7E-8.11 Public trust rights,] N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d)-(e) (No change.)

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule and the development, as proposed, would remain in compliance with the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

7:7E-3.50 Lands and waters subject to public trust rights

(a) Lands and waters subject to public trust rights are tidal waterways and their shores, including both lands now or formerly below the mean high water line, and shores above the mean high water line. Tidal waterways and their shores are subject to the Public Trust Doctrine and are held in trust by the State for the benefit of all the people, allowing the public to fully enjoy these lands and waters for a variety of public uses. **Public trust rights include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights and to use these lands and waters for activities such as navigation, fishing and recreational activities including swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public trust rights may also include the right to perpendicular and linear access.**

(b) [Development that adversely affects lands and waters subject to public trust rights is discouraged.

(c) In accordance with the moratorium imposed under the Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq., the requirements of this section shall not apply to marinas until January 1, 2011.

(d)] Public access to lands and waters subject to public trust rights shall be provided in accordance with the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. **Development that does not comply with N.J.A.C. 7:7E-8.11 public access, in lands and waters subject to public trust rights, is discouraged.**

[(e)] (c) Rationale: See the note at the beginning of this Chapter.

7:7E-7.2 Housing use rules

(a) (No change.)

(b) Standards relevant to water area and water's edge housing are as follows:

1. (No change.)

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i.-ii. (No change.)

iii. New housing acceptable under this rule shall be consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule, N.J.A.C. 7:7E-3.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4.-7. (No change.)

(c)-(d) (No change.)

(e) Standards relevant to the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1.-4. (No change.)

5. Except as provided in (e)5i below, public access shall be provided in accordance with the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Public access requirements may also be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

i. (No change.)

6.- 13. (No change.)

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or

duplex and accessory development are located landward of the mean high water line are as follows:

1.- 4. (No change.)

5. [Except as provided in (e)5i below, public] **Public** access shall be provided in accordance with the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11. [Public access requirements may also be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).]

[i. In accordance with N.J.A.C. 7:7E-8.11(f)5, the Department shall not require public access for the development listed under (f) above provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores.]

6.-13. (No change.)

(g) (No change.)

7:7E-7.3 Resort/Recreational Use

(a)-(c) (No change.)

(d) Standards relevant to marinas are as follows:

1. (No change.)

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i.-iii. (No change.)

iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

3.-11. (No change.)

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. [For the purposes of this subsection, "amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" do not include games for cash payoffs, or bars or restaurants;

2.] New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. – v. (No change.)

vi. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11;

[3.] **2.** The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

[4.] **3.** Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-7.4 Energy facility use rule

(a) (No change.)

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1.-2. (No change.)

3. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11; and

4. (No change.)

(c)-(s) (No change.)

7:7E-7.7 Industry Use rule

(a) (No change.)

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to Location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32); to the Buffers and compatibility of uses rule N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11, which places public access requirements upon the use.

(c)-(g) (No change.)

7:7E-7.11 Coastal engineering

(a)-(c) (No change.)

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i.-iii. (No change.)

iv. Public access to the nourished beach is provided in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

2. (No change.)

(e) Standards relevant to structural shore protection are as follows:

1.-3. (No change.)

4. Public access to the shore protection project is provided in accordance with the Lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50 and the Public [trust rights] **access** rule, N.J.A.C. 7:7E-8.11.

5.-6. (No change.)

7:7E-8.11 Public [trust rights] **access**

(a) [Public trust rights to tidal waterways and their shores (public trust rights) established by the Public Trust Doctrine include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights as defined at N.J.A.C. 7:7E-3.50, and to use these lands and waters for activities

such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. Public trust rights also include the right to perpendicular and linear access.]

Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from, and along the ocean shore and other waterfronts. Public accessways and public access areas provide a means for the public to pass along and use lands and waters subject to public [trust rights] **access requirements and include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way. Public access for the “Hudson River Waterfront Area” shall be provided in accordance with N.J.A.C. 7:7E-3.48.**

[(b) When used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Green Acres funding" means a loan or matching grant, or both, to a local government unit, or a matching grant to a nonprofit, for the acquisition of land or the development of outdoor recreation and conservation facility(ies) provided by the Department's Green Acres Program in accordance with N.J.A.C. 7:36.

"Held" when used with reference to land means owned, leased, or otherwise controlled.

"Natural area" means an area that has retained its natural character, as evidenced by the presence of woody vegetation (trees, saplings, scrub-shrub vegetation) or rare or endangered plants. A disturbed area may be considered a natural area if such vegetation is present. A natural area does not include maintained lawns or areas landscaped with non-native herbaceous plants.

"Paper street" means the street shown on a recorded plan but never built.

"Public accessway" means a route that provides a means for the public to reach, pass along, and/or use lands and waters subject to public trust rights. Public accessways include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way.

"Shore Protection Program funding" means monies from the Shore Protection Fund established by N.J.S.A. 13:19-16 and any other Department money provided for shore protection projects associated with the protection, stabilization, restoration or maintenance of the shore and adjacent land, including beach nourishment projects and land acquisitions. A State Aid Agreement is the means by which a municipality participates in Shore Protection Program funding.

"State Aid Agreement" means a cost sharing agreement entered into by the Department and a municipality for the construction of a shore protection or beach nourishment project. The State Aid Agreement shall describe the project and project area for purposes of compliance with (p)7ii through vi and (p)8ii through v below in recognition of the phasing of a large-scale or multi-phase shore protection or beach nourishment project.

(c) In accordance with the moratorium imposed under the Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq., the requirements of this section shall not apply to marinas until January 1, 2011. Prior to January 1, 2011 marinas shall be subject to the requirements of this section in effect as of December 16, 2007, incorporated by reference herein as chapter Appendix 6.

(d) Except as otherwise provided at (f) below, development on or adjacent to all tidal waterways and their shores shall provide onsite, permanent, unobstructed public access to the tidal waterway and its shores at all times, including both visual and physical access. Specific requirements for sites located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansey River in Bridgeton City, and Maurice River in Millville City are found at (e) below. Public accessways and public access areas shall:

1. Include perpendicular access and a linear area along the tidal waterway and its entire shore; and

2. If located in a natural area of a tidal waterway, be designed to minimize the impacts to the natural area and tidal waterway including impacts to habitat value, vegetation and water quality.

(e) Except as provided in (f) below, in addition to the requirements of (d) above, the perpendicular access and linear area provided for sites located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansey River in Bridgeton City, and Maurice River in Millville City, shall comply with the following. The standards for public access along the Hudson River Waterfront Area are set forth at N.J.A.C. 7:7E-3.48.

1. The linear area shall consist of a walkway that meets the following:
 - i. The minimum width of walkway free of obstruction shall be 16 feet; and
 - ii. An area a minimum of 30 feet wide, including the walkway area, shall be permanently protected by a conservation restriction; and
2. The perpendicular access shall consist of a walkway that meets the following:
 - i. The minimum width of the walkway free of obstruction shall be 10 feet;
 - ii. An area a minimum of 20 feet wide, including the walkway area shall be permanently protected by a conservation restriction; and
 - iii. The linear distance between perpendicular accessways shall not exceed one-half mile as measured generally parallel to the waterway; and
3. The Department may reduce the walkway width requirements at (e)1i and 2i above, as necessary to protect endangered and threatened wildlife or vegetation species habitat, critical wildlife habitat as defined at N.J.A.C. 7:7-3.39 , natural areas or existing infrastructure.

(f) The permanent onsite public access required at (d) and (e) above may be modified in the following circumstances. However, in no case shall such modification constitute permanent relinquishment of public trust rights of access to and use of tidal waterways and their shores.

1. Public access to tidal waterways and their shores shall be available at all times. However, the Department may allow closure of an area otherwise available for public access during specified late night hours upon documentation of unique circumstances,

other than the risk associated with tidal waterways, that threaten public safety and warrant such closure. In no case shall physical barriers be used to close public access. This exception does not apply to the Hudson River Waterfront Area or to the waterways listed in (e) above;

2. The Department may allow, require or impose temporary restrictions to public access, including closure of an area otherwise subject to public access, when it determines:

i. Exigent circumstances of public safety or security, or repair, maintenance, or construction relating to any public access infrastructure such as a walkway or boardwalk exist, with such closure to terminate immediately when such exigent circumstances cease to exist;

ii. Restrictions are necessary to protect endangered or threatened wildlife or plant species from disturbance or destruction; or

iii. Restrictions are necessary to protect other critical wildlife resources such as seasonal assemblages of wildlife in areas that provide critical feeding, roosting, resting or staging habitat;

3. Where development of a new or at an existing energy facility, industrial use, port use, airport, railroad, military facility, or superhighway is proposed and the Department determines that perpendicular access and/or a linear area along the entire shore of the tidal waterway at the site is not practicable based on the risk of injury from existing or proposed hazardous operations, or substantial existing and permanent obstructions, and no measures can be taken to avert these risks, public access shall be provided in accordance with (f)3i or ii below. For the purposes of this paragraph, "superhighway" shall mean the Garden State Parkway, New Jersey Turnpike, Atlantic City Expressway, and Interstates 76, 78, 80, 95, 276, 278, 195, 295, and 676.

i. The linear public access that would be required in accordance with (d) above on site shall be reconfigured and enhanced to accommodate such structures and address such risks; or

ii. If public access on site is not practicable in accordance with (f)3i above, alternate public access of comparable use to the public shall be provided at a nearby off site location;

4. Where development of a new or at an existing two-unit (excluding duplexes) or three-unit residential development, or associated accessory development or associated shore protection structure is proposed, the Department may allow the provision of alternate public access onsite or at a nearby offsite location based on an evaluation of the size of the site, the character of the waterway, and the availability and type of public access in the vicinity, provided (f)4i through iii below are met. This paragraph does not apply to the Hudson River Waterfront Area and the waterways listed at (e) above. Public access requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below.

i. The development does not result in the development of more than three residential units either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;

ii. No beach and dune maintenance activities are proposed; and

iii. The site is not located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores;

5. Where development of a new or at an existing two-unit or three-unit (excluding duplexes) residential development, or associated accessory development, or associated shore protection structure is proposed that meets (f)4i above and is located on a site that is located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansey River in Bridgeton City, and Maurice River in Millville City, linear and perpendicular public access shall be provided in accordance with the following:

i. The linear area shall consist of a walkway, that meets the following:

(1) The minimum width of walkway free of obstruction shall be 10 feet; and

(2) An area a minimum of 20 feet wide, including the walkway area shall be permanently protected by a conservation restriction; and

ii. The perpendicular access shall consist of a walkway that meets the following:

(1) The minimum width of the walkway free of obstruction shall be 10 feet;

(2) An area a minimum of 10 feet wide, including the walkway area shall be permanently protected by a conservation restriction;

6. Except as provided in (f)7 below, the Department shall not require public access where development of a new or at an existing single family home, duplex, or associated accessory development or associated shore protection structure is proposed, provided (f)6i through iii below are met. Public access requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below. This paragraph does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

i. The development does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;

ii. No beach and dune maintenance activities are proposed; and

iii. The site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores;

7. Where development of a new or at an existing single family home, duplex, or associated accessory development, or associated shore protection structure is proposed that meets (f)6i above and is located on a site that includes a beach on which beach and dune maintenance activities are proposed or a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, public access along and use of the beach and the shore shall be provided. Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below; or

8. Where development impacting a facility subject to a Federal or State homeland security statutory scheme is proposed and the Department determines, upon consultation with the Office of Homeland Security and Preparedness, that perpendicular public access

and/or a linear public access area along the entire shore of the tidal waterway is not practicable because it poses an unacceptable homeland security risk:

i. The linear public access that would be required in accordance with (d) above on site shall be reconfigured and enhanced to address such homeland security risk; or

ii. If public access on site is not practicable in accordance with (f)10i above, alternate public access of comparable use to the public shall be provided at a nearby off site location.]

(b) Development, proposed on sites which are located on or adjacent to tidal waterways and their shores, requires public access. Municipalities are encouraged to develop and submit to the Department, a Municipal Public Access Plan. Upon approval of a Municipal Public Access Plan by the Department, public access required to satisfy the conditions of a Department-approved permit shall be provided in accordance with the Municipal Public Access Plan. In municipalities that do not have an approved Municipal Public Access Plan, access shall be provided in accordance with N.J.A.C. 7:7E-8.11(f). Marinas, as defined at N.J.A.C. 7:7E-7.3(d)1, piers, beach and dune maintenance activities, and shore protection shall not be included in Municipal Public Access Plans, but are instead addressed at N.J.A.C. 7:7E-8.11(g) through (j) below.

1. Municipalities that obtain approval of a Municipal Public Access Plan, in accordance with (c), (d) and (e) below, may require a contribution in lieu of an onsite public access requirement, to be used to provide public access elsewhere in the municipality, provided the Municipal Public Access Plan establishes the circumstances when such contribution will be required. If the option for a contribution is included in a Municipal Public Access Plan, the amount of the contribution shall be calculated based on a determination of the costs that would be incurred if land was purchased for creating access and the access was provided in the form of a walkway, using the following calculation:

$$\text{Total Contribution} = \text{TWC} + \text{LAC}.$$

The total walkway cost (TWC) is calculated by adding the length of the perpendicular access, as measured in feet along the shorter property line, running from the non-waterward property boundary to waterward property boundary, to the length of the access parallel to the shore, as measured in feet from property line to property line. The total accessway length is multiplied by 10 feet, the minimum walkway width, to give the total square feet of walkway. The TWC is determined by multiplying the total square feet of walkway by \$7.00 (approximate average cost for walkway construction per square foot).

The land acquisition cost (LAC) is determined by calculating the total cost of the site per square foot, based upon the assessed value of the property (that is, determine the full assess value of the property, and divide by the total square footage of the property to get a cost per square foot). Multiply the square footage cost by the total square feet of walkway to obtain the land acquisition cost.

For example, the total contribution for a 10,000 square foot property with a perpendicular access length of 50 feet, a total water frontage of 100 feet and an assessed value of \$80,000 would be calculated as follows:

Total Walkway Cost:

Length of perpendicular access		50 ft.
Length of access parallel to shore	+	100 ft.
<hr/>		
Total linear feet		150 ft.
Minimum walkway width (feet)	x	10 ft.
<hr/>		
Total square feet of walkway		1500 sq. ft.
Total walkway cost (1,500 sq. ft. x \$7.00)		\$10,500

Land Acquisition Cost

Assessed land value of property		\$80,000
Lot size	÷	10,000 sq. ft.
<hr/>		
Cost per sq. ft.		\$8.00/sq. ft.

Land acquisition (\$8/sq. ft. x 1500 sq. ft. total walkway) \$12,000

Total Contribution = \$10,500 + \$12,000 = \$22,500

(c) In addition to the broad coastal goals outlined at N.J.A.C. 7:7E-1.1(c), public access shall be planned in accordance with the following goals:

1. All levels of government in New Jersey shall seek to maintain, enhance, and create public opportunities for access to tidal waters and their shores, on a non-discriminatory basis, for activities such as navigation, fishing, and recreational activities including swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating;

2. All existing public access to, and along, the edge of waters flowed by the tide must be maintained to the extent practicable;

3. New development shall provide opportunity for public access to tidal waters and their shores on or offsite;

4. Public access to the edge of waters flowed by the tide may be restricted, in part, either seasonally, hourly, or in extent, where use will create conditions that may be reasonably expected to endanger the health or safety of the public or environment or create a significant security vulnerability, consistent with federal law;

5. Public access to the edge of waters flowed by the tide may be prohibited in locations where it is inconsistent with federal law or where it is not practicable based on the risk of injury from hazardous operations or substantial permanent obstructions, and no measures can be taken to avert these risks; and

6. Municipal public access plans and/or mitigation measures required in lieu of onsite public access requirements shall provide public access opportunities equivalent to the cumulative access provided by individual, onsite public access requirements.

(d) Municipal Public Access Plans shall meet the goals at N.J.A.C. 7:7E-8.11(c), shall be in accordance with the Coastal Zone Management rules, and shall include the following:

1. A statement describing the overall goal of the Municipal Public Access Plan and the administrative mechanisms that either are already in place, or that shall be put in place to ensure that the municipality will provide reasonable access to water and waterfront-based activities along all State tidal waterways and their shores within the municipal boundaries and, to the extent practical, in adjoining municipalities in the area immediately adjacent to the boundaries of the municipality preparing the plan;

2. A statement of consistency with other applicable provisions of the municipal Master Plan;

3. A public access needs assessment that:

i. Evaluates, along all State tidal waterways and their shores, existing points or locations providing perpendicular access to the water and access along the shore, and waterfront-based activities, and evaluates the need for additional locations to provide perpendicular access to the water and access along the shore, and waterfront-based activities; and

ii. Evaluates existing practical limitations to public access and provides alternatives to address them where feasible. Examples of practical limitations include, but are not limited to, a lack of restrooms or parking, which could effectively limit the public's access to tidal waterways and their shores;

4. A digital map and inventory identifying:

- i. All tidal waterways and their shores within the municipality and all lands held by the municipality adjacent thereto;**
- ii. All existing and proposed public accessways to tidal waterways and their shores including, but not limited to, streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers, and other public dedicated rights-of-way held by the municipality;**
- iii. All proposed public access facilities, including, but not limited to public accessways located parallel to the shoreline with perpendicular access; a boat ramp, pier, or other direct access to the waterway, a sitting/observation area; public restrooms; off-and on-street parking; and**
- iv. Facilities compliant with the Americans with Disabilities Act of 1990 (42 U.S.C.12101);**

5. An implementation strategy that:

- i. Reflects the need for public access, as determined by the public access needs assessment, and presents the various types of public access to be provided, based upon population, anticipated demand and local availability of alternatives;**
- ii. Includes proposed tools to implement the municipal public access plan measures, including, but not limited to ordinances, a Public Access Fund for the sole use and provision and maintenance of public access, and other municipal programs that ensure reasonable access to water and waterfront-based activities along all State tidal waterways and their shores;**
 - (1) In municipalities where a fee is charged for the use of the beach, such fees shall be established and maintained in accordance with N.J.A.C. 7:7E-8.11(p) and documentation regarding the fees shall be maintained and available for inspection upon request by the Department;**
- iii. Identifies and, as necessary, proposes modifications to existing plans, ordinances and programs necessary to implement the municipal public access plan;**

- iv. Includes a consideration for public access in accordance with N.J.A.C. 7:7E-8.11(j) if the municipality anticipates obtaining Federal shore protection funding;**
 - v. Provides an estimate of the cost of implementing, constructing and maintaining the access facilities proposed in the plan;**
 - vi. Proposes a method(s) to fund the costs described in N.J.A.C. 7:7E-8.11(b)5iv above;**
 - vii. Provides a schedule for implementation of the municipal public access plan;**
 - viii. Proposes regulations for appropriate signage and placement of signage for public access areas;**
 - ix. Requires the placement of conservation easements/restrictions, and/or placement of properties providing public access, including those that were required as a condition of an approved development permit, on the municipal Recreation and Open Space Inventory (ROSI) (see Green Acres Program rules at N.J.A.C. 7:36-6.5, Recreation and Open Space Inventory Submissions),**
 - x. Provides examples and/or model(s) of existing and proposed conservation easements/restrictions that preserve all public access identified in the municipal public access plan, to be recorded by the municipality; and**
 - xi. Includes a draft resolution for incorporating the DEP-approved, Municipal Public Access Plan into a Master Plan element (for example, the land use, recreation, and/or conservation element).**
- (e) To obtain Department review and approval of a Municipal Public Access Plan, a municipality shall submit a draft Municipal Public Access Plan and necessary supporting documents to the Department, and provide a full copy of the submittal to all applicable counties and regional planning entities;**

1. The Department shall review the draft Municipal Public Access Plan and supporting documents to determine whether the plan is consistent with the standards and goals for public access at N.J.A.C. 7:7E-3.50(c);

2. Upon a finding of consistency with the goals set forth at N.J.A.C. 7:7E-3.50(c), the Department shall publish notice in the New Jersey Register and the DEP Bulletin;

3. Upon reexamination of the Master Plan, including the Municipal Public Access Plan, consistent with the provisions at N.J.S.A. 40:55D-89, the municipality shall submit the reexamination report and/or updates to the Municipal Public Access Plan to the Department. Significant changes to the Municipal Public Access Plan will require Department review and approval.

(f) In municipalities that do not have an approved access plan, for sites which are located on or adjacent to ocean or bay beaches, and other waterfront shores, public access along and use of the beach and the shores shall be provided as follows:

1. Commercial development, as defined at N.J.A.C. 7:7E-1.8, shall provide both visual and physical access as follows:

i. For existing commercial development, where the proposed activity consists of rehabilitation, renovation, or expansion that remains entirely within the lot or lots which were included in the existing development, existing public access shall be maintained or equivalent public access shall be provided.

If there is no existing public access onsite, no public access is required;

ii. For new commercial development, including the conversion of any existing use to a commercial use, or the expansion of an existing commercial development onto a lot or lots which were not included in the existing development, access shall be provided onsite, at a minimum during normal operating hours. For the purposes of this section, “new commercial development” also includes any change in the existing development that would not qualify as a modification but that would instead require a new permit pursuant to N.J.A.C. 7:7-4.10(b) or (c).

Public access shall be consistent with the access goals in N.J.A.C. 7:7E-8.11(c), and may include, but is not limited to, any one or combination of the following:

- (1) A public accessway located parallel to the shoreline with perpendicular access;**
- (2) A boat ramp, pier, fishing or other direct access to the waterway;**
- (3) A pocket park;**
- (4) Public restrooms; and/or**
- (5) Additional public parking;**

2. Residential development, as defined at N.J.A.C. 7:7E-1.8, shall provide both visual and physical access as follows:

- i. For any residential development located on or adjacent to a beach area or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, public access along and use of the beach and the shore shall not be impeded;**
- ii. Where the proposed activities, at an existing residential development, consist solely of accessory development or structural shore protection, existing access shall be maintained. If it is necessary to impact the existing access in order to perform the activities, equivalent access shall be provided onsite. If currently there is no public access onsite, no public access is required;**
- iii. For residential development which is not located on a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, where the development consists solely of the construction of a single family home or duplex, no public access is required;**
- iv. For new residential development or the conversion of any existing use to a residential use which is not located on a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their**

shores, where the development consists of more than one single family home or duplex, but fewer than 25 residential units or has a total combined water frontage of no more than 500 linear feet, public access shall be provided either onsite or offsite, in accordance with the following:

(1) Unless the applicant demonstrates that onsite public access is not feasible, in accordance with N.J.A.C. 7:7E-8.11(f)2iv(2) below, public access shall be provided onsite, consistent with the access goals in N.J.A.C. 7:7E-8.11(c), and may include, but is not limited to, any one or combination of the following:

(A) A public accessway located parallel to the shoreline with perpendicular access;

(B) A boat ramp, pier, fishing or other direct access to the waterway;

(C) A pocket park;

(D) Public restrooms; and/or

(E) Additional public parking;

(2) If the applicant demonstrates that onsite public access is not feasible, based on the size of the site, the character of the waterway, and the availability and type of public access in the vicinity, offsite public access shall be provided on the same waterway and within the same municipality as the residential development;

v. For new residential development or the conversion of any existing use to a residential use which is not located on a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, where the development consists of more than 24 residential units or has a total combined water frontage of more than 500 linear feet, public access shall be provided as follows:

(1) Public access shall be provided onsite and shall be consistent with the access goals in N.J.A.C. 7:7E-8.11(c), and may include, but is not limited to, any one or combination of the following:

(A) A public accessway located parallel to the shoreline with perpendicular access;

(B) A boat ramp, pier, fishing or other direct access to the waterway;

(C) A pocket park;

(D) Public restrooms; and/or

(E) Additional public parking;

3. Industrial, and public development, as defined at N.J.A.C. 7:7E-1.8, which is not included at (f) below shall provide both visual and physical access as follows:

i. For existing industrial or public development, where the proposed activity consists of the rehabilitation, renovation, or expansion that remains entirely within the lot or lots which were included in the existing development, existing public access shall be maintained or equivalent public access shall be provided. If there is no existing public access onsite, no public access is required;

ii. For new industrial or public development, including the conversion of any existing use to an industrial or public use, or the expansion of an existing industrial or public development where development is proposed on a lot or lots which were not included in the existing development, public access shall be provided onsite, during normal operating hours, to the maximum extent practicable unless it can be demonstrated that continued public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, and no measures can be taken to avert these risks. For the purposes of this section, “new industrial or public development” also means any change in the existing development that would not qualify as a modification but that would instead require a new permit pursuant to N.J.A.C. 7:7-4.10(b) or (c). Access onsite may include, but is not limited to, the following:

- (1) A public accessway located parallel to the shoreline with perpendicular access;**
- (2) A boat ramp, pier, fishing or other direct access to the waterway;**
- (3) A pocket park;**
- (4) Public restrooms; and/or**
- (5) Additional public parking;**

iii. Where it has been demonstrated that onsite access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, and no reasonable measures can be taken to avert these risks, offsite public access shall be provided on the same waterway and within the same municipality as the development;

4. For homeland security uses, as defined at N.J.A.C. 7:7E-1.8, and ports, as defined at N.J.A.C. 7:7E-3.11, public access is not required

(g) Marinas, as defined at N.J.A.C. 7:7E-7.3(d)1, shall provide both visual and physical public access as follows:

- i. For existing marina development, where the proposed activity consists of the rehabilitation, renovation, or expansion that remains entirely within the lot or lots which were included in the existing development,, existing access shall be maintained. If it is necessary to impact the existing access in order to perform the activities, equivalent access shall be provided onsite. If there is no existing public access onsite, no public access is required;**
- ii. For new marina development or the expansion of existing marina development onto a lot or lots which were not included in the existing development, access shall be provided onsite during normal operating hours. For the purposes of this section, “new marina development” also means any change in the existing development that would not qualify as a modification but that would instead require a new permit pursuant to N.J.A.C. 7:7-4.10(b) or (c).**

- iii. For marina development located on or adjacent to the ocean or bay beaches and all other waterfront shores, public access along and use of the beach and the shores shall be provided. Public access shall be consistent with the access goals in N.J.A.C. 7:7E-8.11(c).**
- iv. Applicants for new marinas shall provide to the Department, at the time of application, a public access plan which may include, but is not limited to, the following:**
- (A) A public accessway located parallel to the shoreline with perpendicular access;**
 - (B) A boat ramp, pier, fishing or other direct access to the waterway;**
 - (C) A pocket park;**
 - (D) Public restrooms; and/or**
 - (E) Additional public parking;**
- (h) Development which is located on an existing pier, which is not included at N.J.A.C. 7:7E-8.11(f)4 above, and is not an amusement pier shall provide for access as follows:**
- i. At the seaward end of the pier, publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas shall be provided. The publicly accessible open space shall occupy the entire width of the pier (parallel to the shoreline) for a distance of 50 feet landward from the end of the pier. Outdoor dining and food concessions may occupy the area between 30 and 50 feet inland from the end of the pier, and the area may be partially enclosed using awnings, canopies, and windbreaks. No other structures shall be placed in this area. The public open space shall have unrestricted access, and shall not be limited to patrons;**
 - ii. An open-air public access walkway of at least 12 feet in width shall be provided perpendicular to the shoreline, along one entire side of the pier. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;**

iii. Where the pier is located on or over a beach area, the development shall;

(1) Provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude passage;

(2) Provide a stairway from the pier to the beach;

iv. Parking is prohibited on piers.

(i) For applications including beach and dune maintenance activities, existing public access shall be maintained or equivalent onsite public access shall be provided.

(j) For applicants obtaining permits to conduct shore protection projects, along the shores of the Atlantic Ocean, and/or estuaries and bays directly connected therewith, under the guidance of, and participation by, the Army Corps of Engineers (ACOE), access shall be required approximately every one-half mile or less in accordance with the ACOE Planning Guidance Notebook Section IV– Hurricane and Storm Damage Prevention (CECW-P Engineer Regulation 1105-2-100, April 22, 2000), and the feasibility study, approved by the ACOE for the project in question, or as accepted by the ACOE.

[(g)] (k) Public access must be available on a nondiscriminatory basis. All establishments, including municipalities, counties, marinas, condominium associations, homeowner associations and beach clubs, which control access to tidal waterways and their shores shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

[(h)] (l) Public access to tidal waterways and their shores shall be clearly marked. Department approved public access signs shall be installed at each public accessway, public access area and/or public parking area at the development site and maintained in perpetuity by the permittee and its successors in title and interest. [N.J.A.C. 7:7E-8.11(p) contains the standards for signs for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the standards for signs for

municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site.]

[(i)] **(m)** Activities that have the effect of discouraging or preventing the exercise of public [trust rights] **access** are prohibited. These activities include, but are not limited to, requiring photographic identification, requiring a liability waiver, requiring the purchase of drinks or food from a specific vendor, or prohibiting bringing beach equipment such as blankets or beach chairs.

[(j)] Parking shall be provided for the public to access tidal waterways and their shores, except where public access is not required in accordance with (f)6 above or the project is limited in scope in accordance with (f)7 above. Subsection (p) below contains the parking standards for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the parking standards for municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site. All other development shall provide parking as follows:

1. For developments which propose to reduce existing on-street or off-street parking that is used by the public for access to tidal waterways and their shores, mitigation for the loss of these public parking areas shall be required at a minimum creation to loss ratio of 1:1. This mitigation shall occur through the creation of new parking spaces within the proposed development site or at another location within 250 feet of the proposed development site, except as provided at (j)1i below:

- i. For public roadway projects, where mitigation cannot be accomplished within 250 feet of the proposed development site, mitigation shall occur within one-quarter mile of the proposed development site;

2. The area set aside for off-street parking shall be dedicated for public access parking through the recording of a conservation restriction maintaining the parking spaces in perpetuity; and

3. The area set aside for on-street parking shall be dedicated for public access parking through municipal ordinance.

(k)] (n) Development on or adjacent to tidal waterways and their shores shall provide barrier free access where feasible and warranted by the character of the site.

(o) If a public accessway has been chosen to satisfy the public access requirement in (f) above, the accessway shall provide a minimum width of 10 feet free of obstruction.

[(l) Development on or adjacent to tidal waterways and their shores shall incorporate fishing access and associated amenities to the maximum extent practicable within the area provided for public access. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming.]

[(m)] (p) A fee for use of bathing and recreational facilities and safeguards, such as lifeguards, toilets, showers, and parking, at publicly or privately owned beach or waterfront areas, may be charged in accordance with [(m)] (p)1 through 6 below. However, no fees shall be charged solely for access to or use of tidal waterways and their shores. The fee schedule and documentation of compliance with this paragraph shall be submitted to the Department by the permittee [, Shore Protection Program participant or recipient of Green Acres funding for a Green Acres project site,] and its successors in title and interest upon request.

1. Fees shall be no greater than that which is required to operate and maintain the facility, taking into consideration basic support amenities provided, such as lifeguards, restroom/shower facilities and trash pickup. This requirement applies to facilities and services directly associated with using the tidal waterways and their shores and does not apply to additional amenities such as cabanas, pools, or restaurants;

2. Fees shall not discriminate between residents and non-residents or on any other basis, except as allowed by this rule or other law;

3. Fees shall not be charged for children under the age of 12 years;

4. Badges or passes must be available for sale at times and places that are reasonably convenient for the public. Badges and passes shall be offered for sale in person at the beach or waterfront area during the hours that the beach is staffed. In addition, if the entity that owns or operates the beach or waterfront area offers private memberships,

public badges or passes must be offered for sale to the public in the same manner, times and places as private memberships;

5. Weekly, monthly or seasonal badges or passes shall be transferable at the discretion of the badge or pass holder; and

6. Public access to and use of tidal waterways and their shores may not be conditioned upon providing identification or signing or otherwise agreeing to any waiver or similar disclaimer of rights.

[(n)] (q) The areas set aside for public access to tidal waterways and their shores shall be permanently dedicated for public use through the recording of a Department approved conservation restriction under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., maintaining the publicly dedicated areas in perpetuity. [Subsection (p) below contains the conservation restriction standards for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the conservation restriction standards for municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site. N.J.A.C. 7:7E-8A.4 contains the recording requirements for all conservation restrictions.] **A conservation restriction shall:**

1. Be in the appropriate form and terms as specified and approved by the Department;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.;

3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof;

4. Be recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development, project, or project site is located; and

i. Proof of filing shall be submitted to the Department prior to the commencement of site preparation or construction, or permit effectiveness.

[(o) No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights.

(p) Municipalities that participate in Shore Protection Program funding through a State Aid Agreement shall:

1. Submit the following to the Department for approval prior to issuance of a coastal permit:

i. A draft public access plan that meets the requirements of N.J.A.C. 7:7E-8A.2 and 8A.3 and a draft ordinance adopting the public access plan; and

ii. A draft Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5;

2. Comply with (c) through (m) above, as applicable for municipally held lands on or adjacent to tidal waterways and their shores. Compliance with (e) above will be required only at a shore protection project, including beach nourishment, proposed along one of the waterways listed at (e) above and not for other municipally held lands;

3. Prior to commencement of construction, including beach nourishment, provide public access to all tidal waterways and their shores on or adjacent to lands held by the municipality;

4. Prior to commencement of construction, including beach nourishment, adopt the ordinance and record the Public Access Instrument approved by the Department pursuant to (p)1 above;

5. Prior to commencement of construction, including beach nourishment, repeal any ordinance that limits access to or use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine;

6. Not enact or adopt ordinances or engage in activities in conflict with public access to or use of tidal waterways and their shores, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

7. For shore protection projects, including beach nourishment, described in the State Aid Agreement and located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores:

i. Prior to commencement of construction, including beach nourishment, record in accordance with N.J.A.C. 7:7E-8A.4, a Department-approved conservation restriction that maintains the following areas for public access in perpetuity:

(1) The entire shore protection project, except those portions of jetties and groins on which public access is not required in accordance with (p)7ii below, and where the shore protection project is a structure, the entire beach or shore outshore of the project;

(2) The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument approved by the Department pursuant to (p)1 above, including paths, trails, dune walkovers/walkways, and piers, and public accessways proposed pursuant to (p)7iii below; and

(3) All parking areas identified in (p)7v below;

ii. Immediately upon completion of construction, including beach nourishment, provide public access to the entire shore protection project, and where the shore protection project is a structure, the entire beach or shore outshore of the project. Public access is not required to those portions of jetties and groins where it is demonstrated that access poses an extraordinary risk of injury;

iii. Immediately upon completion of construction, including beach nourishment, provide public accessways to the shore protection project, and where the shore protection project is a structure, the entire beach or shore outshore of the project. The linear distance between public accessways shall not exceed one-quarter mile for the length of the shore protection project, as measured generally parallel to the beach/shore, except as provided at (p)7iii(1) below. In areas where existing public accessways, including, but not limited to, streets, roads, paper streets, paths, trails, easements, dune walkovers/walkways, piers and other dedicated public rights-of-way are closer than one-quarter mile apart, the number of existing access points shall not be reduced;

(1) The linear distance between public accessways can exceed one-quarter mile provided:

(A) The average interval between public accessways to the shore protection project within the municipality is one-quarter mile; and

(B) In no case is the interval between public accessways greater than three-eighths mile;

iv. Immediately upon completion of project construction, the public restroom facilities that are identified in the approved public access plan required in accordance with (p)1 above and located within the project area and within one-quarter mile of the project area, as measured generally parallel to the beach/shore, shall be open to the public for use. The restroom facilities shall be open to the public for use from the beginning of Memorial Day weekend through September 30, at minimum;

v. Immediately upon completion of project construction, provide parking sufficient to accommodate public demand to access the project and the beach capacity of all beaches within the municipality along that portion of the waterway on which the project occurs. The Department may allow a reduction in the number of parking spaces required upon documentation that the municipality has exhausted all possibilities to provide the required number of parking spaces. Alternative methods of providing adequate parking that must be considered include land acquisition, restriping or reconfiguring parking, removing existing parking restrictions and providing remote/offsite parking with shuttle service; and

vi. Immediately upon completion of construction, including beach nourishment, install Department approved public access signs at each public accessway to the shore protection project, except at jetties and groins that are not designed for public use. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding;

8. For shore protection projects, including beach nourishment, described in the State Aid Agreement and located on or adjacent to waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores:

i. Prior to commencement of construction, including beach nourishment, record in accordance with N.J.A.C. 7:7E-8A.4, a Department-approved conservation restriction that maintains the following for public access in perpetuity:

(1) The entire shore protection project, except for those portions of jetties and groins on which public access is not required in accordance with (p)8ii below;

(2) The public accessways held by the municipality that lead to or provide access to the shore protection project and are not listed in the Public Access Instrument approved by the Department pursuant to (p)1 above, including paths, trails, dune walkovers/walkways, and piers, and public accessways proposed pursuant to iii below; and

(3) All parking areas identified in (p)8iv below;

ii. Immediately upon completion of construction, including beach nourishment, permit public access to the entire shore protection project. Public access is not required to those portions of jetties and groins where it is demonstrated that access poses an extraordinary risk of injury;

iii. Immediately upon completion of construction, including beach nourishment, provide accessways along a linear shore protection project, including a beach nourishment project, of one-half mile or more in length at an interval not to exceed one-quarter mile as measured parallel to the shore protection project structure or nourished beach;

iv. Immediately upon completion of project construction, provide parking sufficient to accommodate public demand to access the entire project, taking into account the availability of existing public parking; and

v. Immediately upon completion of construction, install Department approved public access signs at the site of the shore protection project, except at jetties or groins that are not designed for public use. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding;

9. Within 180 days of completion of an emergency shore protection project, including beach nourishment, comply with (p)1 through 8 above; and

10. Any municipality that participates in Shore Protection Program funding after December 17, 2007, that undertakes any action that is determined by the Department to be in conflict with this section or the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with this regulation or the Public Trust Doctrine. If the Shore Protection Program funding participant does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

- i. Withhold Shore Protection Program funding;
- ii. Terminate the State Aid Agreement;
- iii. Demand immediate repayment to the Shore Protection Fund of all Shore Protection Program funding for the project(s) in which the municipality participated; and/or
- iv. Pursue any other specific remedies in the State Aid Agreement.

(q) To be eligible for Green Acres funding for a Green Acres project site, a municipality, county, or nonprofit organization shall comply with (q)1 through 5 below. For the purposes of this subsection, the "Green Acres project site" is the land that is the subject of an application for Green Acres funding that contains or is adjacent to tidal waterways and their shores. Applicants for Green Acres funding for a Green Acres project site shall:

1. Submit to the Department for approval, as part of an application for Green Acres funding for a Green Acres project site, a public access plan that meets the requirements at N.J.A.C. 7:7E-8A.2 and 8A.3, and, if the applicant is a municipality, a Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5. In lieu of these documents, any applicant may submit a certification described at (q)1i below.

- i. The certification shall certify that, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36 notifying the applicant that its application for Green Acres funding has been approved, the applicant shall:

- (1) Submit such public access plan;
- (2) Comply with (q)2 through 5 below; and

(3) For an applicant that is a municipality, submit a Public Access Instrument complying with N.J.A.C. 7:7E-8A.5;

ii. An applicant that is a municipality or county shall also submit with the plan, a draft ordinance adopting the public access plan;

2. If not submitted as part of an application for Green Acres funding for a Green Acres project site all documents at (q)1i and ii above, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36 notifying the applicant that its application for Green Acres funding has been approved, submit to the Department for approval. The Department will not enter into a Green Acres project agreement pursuant to N.J.A.C. 7:36 prior to Department approval of the public access plan and Public Access Instrument, as applicable;

3. Comply with (c) through (m) above, as applicable. Compliance with (e) above will be required only where the project site is located along one of the waterways listed at (e) above.

4. Provide public access to all tidal waterways and their shores on or adjacent to lands held by the applicant;

5. Not enact or adopt ordinances or engage in activities in conflict with the Public Trust Doctrine, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

6. In addition to complying with (q)1 through 5 above, an applicant that is a municipality shall:

i. Prior to disbursement of Green Acres funding for a Green Acres project site, repeal any ordinance that limits access to and use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine; and

ii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance adopting the public access plan required at (q)1ii above and record the Public Access Instrument approved by the Department pursuant to (q)1 or 2 above, respectively;

7. In addition to complying with (q)1 through 5 above, prior to disbursement of Green Acres funding for a Green Acres project site, an applicant that is a county shall adopt an ordinance adopting the public access plan approved by the department pursuant to (q)1 and 2 above;

8. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide public access along the tidal waterway and its entire shore at the Green Acres project site;

9. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide at least one accessway to the tidal waterway, its shore and the project site across land held by the recipient of Green Acres funding. Additional accessways shall be provided as necessary given the size, location, and proposed use of the site;

10. Immediately upon disbursement of Green Acres funding for a Green Acres project site, install and maintain in perpetuity Department approved public access signs at each public accessway and/or public access area at the project site;

11. Immediately upon disbursement of Green Acres funding for a Green Acres project site, record a Department-approved conservation restriction maintaining the following areas for public access in perpetuity. All lands held by the municipality or county for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory for the municipality and county, respectively, as required by Green Acres as a condition of funding pursuant to N.J.A.C. 7:36.

i. The project site;

ii. The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument, including paths, trails, dune walkovers/walkways, and piers and public accessways pursuant to (q)9 above; and

iii. All parking areas identified in (q)12 below;

12. Within 10 days of completion of a Green Acres funded development for a Green Acres project site or within 180 days of disbursement of Green Acres funding for acquisition for a Green Acres project site, provide public restrooms and parking for the

project site as directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and

13. Any Green Acres funding recipient for a Green Acres project site that, after December 17, 2007, undertakes any action that is determined by the Department to be in conflict with the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with the Public Trust Doctrine. If the Green Acres funding recipient for a Green Acres project site does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

- i. Withhold Green Acres funding;
- ii. Terminate the Green Acres Project Agreement executed pursuant to N.J.A.C. 7:36; and/or
- iii. Demand immediate repayment of all Green Acres funding that has been disbursed to funding recipient.]

(r) (No change.)

[SUBCHAPTER 8A. INFORMATION REQUIRED TO DEMONSTRATE
COMPLIANCE WITH THE PUBLIC TRUST RIGHTS RULE, N.J.A.C. 7:7E-8.11;
CONSERVATION RESTRICTIONS AND PUBLIC ACCESS INSTRUMENTS

7:7E-8A.1 Purpose and scope

(a) This subchapter sets forth information that shall be included in the public access plan developed in accordance with subsections (p) and (q) of the public trust rights rule, N.J.A.C. 7:7E-8.11. N.J.A.C. 7:7E-8A.2 sets forth the information requirements for the public access plan that is required for municipalities to participate in Shore Protection Program funding or to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.3 sets forth the information requirements for the public access plan that is required for counties and nonprofit organizations to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.4 sets forth the requirements for the form and recording of conservation restrictions required

pursuant to the N.J.A.C. 7:7E-8.11(n), (p) and (q). N.J.A.C. 7:7E-8A.5 sets forth the requirements for Public Access Instruments required pursuant to the N.J.A.C. 7:7E-8.11(p) and (q).

(b) When used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Green Acres project site" means the land that is the subject to an application for Green Acres funding that contains or is adjacent to tidal waterways and their shores.

"Held" when used with reference to land means owned, leased or otherwise controlled.

"Paper street" means the street shown on a recorded plan but never built.

7:7E-8A.2 Information requirements for public access plans submitted by municipalities to participate in Shore Protection Program funding or be eligible for Green Acres funding

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(p)1 and (q)1 for a municipality to participate in Shore Protection Program funding or be eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(p) and (q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan shall include the following:

1. A current tax map identifying:

i. All tidal waterways and their shores within the municipality and all lands held by the municipality adjacent thereto;

ii. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers, and other public dedicated rights-of way held by the municipality;

2. Copies of all existing and proposed conservation restrictions required pursuant to N.J.A.C. 7:7E-8.11(p)7i and 8i, and (q)10;

3. A draft Public Access Instrument as described at N.J.A.C. 7:7E-8A.5 and required pursuant to N.J.A.C. 7:7E-8.11(p)1ii and (q)5i;

4. A fee schedule for use of bathing and recreational facilities and safeguards, at tidal waterways and their shores held by the municipality if fees are charged.

i. For shore protection projects, including beach nourishment, a fee schedule shall also be provided for lands subject to a conservation restriction at N.J.A.C. 7:7E-8.11(p)7i(1) and 8i, if a fee is charged;

5. Draft ordinances required pursuant to N.J.A.C. 7:7E-8.11(p)1i or (q)1i as applicable. The ordinances shall provide that they may not be modified or repealed without prior approval of the Department;

6. Copies of all ordinances addressing use of the beach, tidal waterways and their shores and parking proximity to tidal waterways and their shores; and

7. A compliance statement, including supplemental documents as needed, demonstrating how the municipality and the proposed project comply with N.J.A.C. 7:7E-8.11(p) or (q) as applicable.

(c) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(p) shall include the following:

1. Copies of prior State Aid Agreements;

2. For shore protection and beach nourishment, projects located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a current tax map identifying:

i. All existing and proposed public restrooms within the municipality located within one-quarter mile of the landward edge of the beach, or dune along the waterway on which the project occurs. The site plan shall provide that:

(1) There is at least one restroom facility every one-half mile within the municipality as measured generally parallel to the beach except in accordance with (c)2i(4) below;

(2) A restroom facility shall be located within one-quarter mile of each municipal boundary. The one-quarter mile from the municipal boundary can be increased provided

the one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the one-quarter mile is increased and the distance from the municipal boundary is no greater than three-eighths mile;

(3) Each restroom facility shall be located within one-quarter mile of the landward edge of the beach, or dune; and

(4) The one-half mile interval between restrooms required at (c)2i(1) above can be increased provided:

(A) The average interval between restrooms within the municipality is one-half mile, as measured generally parallel to the beach;

(B) The one-quarter mile maximum distance from the landward edge of the beach, or dune to the restroom is reduced by the amount the distance between restrooms is increased; and

(C) In no case is the interval between restrooms greater than five-eighths mile, as measured generally parallel to the beach; and

ii. All existing and proposed parking for the public to access the project and the beach along the waterway on which the project occurs; and

3. For shore protection and beach nourishment projects located on or adjacent to waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a site plan identifying all existing and proposed parking for the public to access the entire shore protection project and/or nourished beach.

(d) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(q) shall also include a site plan for the Green Acres project site identifying:

1. All tidal waterways and their shores located on or adjacent to the Green Acres project site;

2. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways,

piers and other dedicated public rights-of-way located on the site, and municipally held public accessways within one-quarter mile of the Green Acres project site; and

3. All existing and proposed restrooms and parking held by the municipality for the public to access tidal waterways and their shores on and within one-quarter mile of the Green Acres project site.

7:7E-8A.3 Information requirements for public access plans submitted by counties or nonprofit organizations to be eligible for Green Acres funding

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(q) for a county or nonprofit organization to be eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan under this section shall include the following:

1. A site plan of the Green Acres project site identifying:

i. All tidal waterways and their shores located on or adjacent to the Green Acres project site;

ii. All existing and proposed public accessways to tidal waterways and their shores including streets, paths, trails, easements, paper streets, dune walkovers/walkways, piers and other dedicated public rights-of-way located on the Green Acres project site;

iii. All existing and proposed restrooms and parking for the public to access tidal waterways and their shores on the Green Acres project site;

2. Copies of all existing and proposed conservation restrictions required pursuant to N.J.A.C. 7:7E-8.11(q)10;

3. For an applicant that is a county, a draft ordinance required pursuant to N.J.A.C. 7:7E-8.11(q)1; and

4. A compliance statement demonstrating how the county or nonprofit organization and the proposed project comply with N.J.A.C. 7:7E-8.11(q).]

7:7E-8A.4 Conservation restriction form and recording requirements

(a) A conservation restriction required at N.J.A.C. 7:7E-8.11(n), (p) or (q) shall be recorded in the chain of title for all properties affected by the restriction.

(b) A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department and in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.; and

3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof.

(c) A conservation restriction required pursuant to N.J.A.C. 7:7E-8.11(n), (p) and (q) shall be recorded within the time frames specified therein and prior to any Department permit becoming effective.

(d) Proof that a conservation restriction required in (c) above has been recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development, project, or project site is located shall be submitted to the Department prior to the commencement of site preparation or construction, or permit effectiveness except as provided at (d)1 and 2 below:

1. For developments receiving Green Acres funding that do not require a coastal permit, proof that the conservation restriction has been recorded shall be submitted within 90 days of the disbursement of Green Acres funding; and

2. For acquisitions receiving Green Acres funding, proof that the conservation restriction has been recorded shall be submitted within 90 days of the disbursement of Green Acres funding.

(e) Authorizations and approvals issued by the Department shall not be valid authority to begin site preparation or construction until the Department approved conservation restriction is recorded, except as provided at (d)1 above.

7:7E-8A.5 Public Access Instrument requirements

(a) A Public Access Instrument required pursuant to N.J.A.C. 7:7E-8.11(p)1i and (q)5i is a conservation restriction recorded by a municipality that transfers to the Department the municipality's right to vacate, dispose of, or divert the lands listed and identified in (b) below to a use that precludes public access to tidal waterways and their shores at those lands.

(b) The Public Access Instrument shall list and identify by name all streets, roads, paper streets, easements, or other dedicated public rights-of-way held by the municipality that lead to tidal waterways and their shores. These shall be listed by block, lot and property owner on which the street, road, paper street, easement, or other dedicated public right-of-way is located and the lot, block and property owner of the lots that abut the street, road, paper street, easement, or other dedicated public right-of-way.

1. The portion of the street, road, paper street, easement, or other dedicated public right-of-way subject to the Public Access Instrument is:

i. Where a beach or dune is present:

(1) The portion of a street, road, paper street, easement, or other dedicated public right-of-way located on the beach or dune; and

(2) The portion of a street, road, paper street, easement, or other dedicated public right-of-way extending landward of the beach or dune to the first cross street or for a distance of one-quarter mile whichever is less; or

ii. Where no beach or dune is present:

(1) The portion of a street, road, paper street, easement, or other dedicated public right-of-way extending landward of the mean high water line to the first cross street or for a distance of one-quarter mile whichever is less.

2. To be eligible for Green Acres funding, all lands held by a municipality for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory required by Green Acres as a condition of funding pursuant to N.J.A.C. 7:36.

(c) The Public Access Instrument is a conservation restriction and shall comply with N.J.A.C. 7:7E-8A.4.]

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