

## **Highlights of the Public Access Proposal**

*Proposed on November 6, 2006*

### **Overview**

As the New Jersey coastline continues to be developed and redeveloped, it is essential that development be conducted in a way that protects the public's access to, and use of tidal waterways and their shores. The current rule pertaining to public access to the waterfront requires that coastal development adjacent to coastal waters provide permanent perpendicular and linear access to the waterfront, to the maximum extent practical. In light of the importance of the rights protected by the Public Trust Doctrine and the constant development pressures threatening to reduce public access, the [proposed new rules and amendments](#) to the Coastal Permit Program rules and Coastal Zone Management rules will ensure that the public's rights continue to be protected and that improvements are accomplished, such as assuring that parking and restroom facilities are available, to provide families and others a realistic and meaningful opportunity to enjoy the public's resources.

### **Lands and Waters subject to Public Trust Rights Rule**

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 people, allowing the public to fully enjoy these lands and waters for a variety of uses, including swimming, sunbathing, boating, fishing and walking along the tidal waterway and its shore. Because these lands and waters are so valuable, they merit the focused attention and special management afforded by a special area rule. This new special area rule would protect these lands and waters by discouraging development that adversely affects them. Further, development that adversely affects or limits public access to lands and waters subject to public trust rights would be prohibited, with limited exceptions.

### **Public Trust Rights rule**

The department is proposing to repeal the existing Public Access to the Waterfront Rule and replace it with a new Public Trust Rights Rule. The proposed new rule contains standards for all coastal development as well as specific standards for municipalities participating in the Shore Protection Program and for municipalities, counties and nonprofit organizations to receive Green Acres Program funding. The new rule:

- Requires development on or adjacent to tidal waterways and their shores to provide onsite, permanent, unobstructed access to tidal waterways and their shores at all times, including visual and physical access, with limited exceptions;
- Sets forth specific perpendicular and linear access requirements for sites located along the Arthur Kill, Kill Van Kull, Newark Bay, and the Delaware, Elizabeth, Hackensack, Passaic, Rahway and Raritan Rivers, Cohansey River in Bridgeton and Maurice River in Millville;
- Recognizes that linear access may not always be practicable and that circumstances may exist that warrant modification of the location, scope or timing of the public access provision. The rule contains several situations, each with specific criteria, in which modification of permanent onsite public access requirements of the rule may be allowed.

These include situations where: a unique risk associated with late night access is documented; circumstances exist that warrant temporary restrictions to public access, including closure of public access areas for a limited time; certain hazardous operations occur and risk of injury is present, including energy facilities, industrial uses, port uses, airports, railroads and military facilities. The department may also modify the public access requirements at proposed residential developments consisting of one, two and three units depending upon the location of the proposed development and whether beach and dune maintenance activities are proposed;

- Contains standards for fees for public access to or use of public and privately owned beaches, addressing the amount of the fee charged, discrimination and ability of the public to purchase badges or passes;
- Sets forth standards relating to the public's ability to access and use tidal waterways and their shores by addressing signage, parking and barrier-free access; and
- Requires the public access portion of the site to be permanently dedicated for public use through recording of a department-approved conservation restriction maintaining the publicly dedicated area in perpetuity.

### **Public access requirements relating to Shore Protection Program and Green Acres funding**

The existing public access rule provides that municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding. The proposed new rule contains additional standards for these funding programs to provide specificity with respect to public access conditions, including linear and perpendicular access to tidal waterways and their shores, the frequency of perpendicular access, and restroom and parking requirements.

#### Shore Protection Program funding

The proposed rule contains specific public access requirements that must be met by municipalities seeking to participate in the Shore Protection Program. The rule requires municipalities to:

- Submit a public access plan, Public Access Instrument and ordinance adopting the plan. A public access plan is a document that demonstrates how the municipality will comply with the requirements of the rule. A Public Access Instrument is a conservation restriction recorded by municipalities to maintain in perpetuity the municipal streets and other dedicated public rights-of-way leading to tidal waterways and their shores that are identified in the public access plan. To ensure that the municipality implements the public access plan, the rule requires that the plan be adopted by ordinance; and
- Meet specific provisions of the Public trust rights rule for municipally held lands on or adjacent to tidal waterways and their shores, provide public access to all tidal waterways and their shores that are on or adjacent to lands held by the municipality, repeal any ordinance that limits access to or use of tidal waterways and their shores or otherwise conflicts with the Public Trust Doctrine, and not enact or adopt ordinances or engage in activities in conflict with public access to or use of tidal waterways and their shores.

In addition to the above standards which apply to all projects, additional standards are proposed that would apply based on the whether the shore protection or beach nourishment

project is located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay. For projects located on these waterways the rule requires the municipality to:

- Record of a department-approved conservation restriction that maintains public access for the entire project, all beaches within the municipality along the waterway on which the project occurs, public accessways held by the municipality that lead to or provide access to tidal waterways and their shores, and all required parking in perpetuity;
- Provide public accessways to the project and all beaches within the municipality along the waterway on which the project occurs. The linear distance between public accessways shall not exceed ¼ mile as measured generally parallel to the beach/shore with limited exceptions;
- Provide public restrooms within the project area and within ¼ of the project area. The linear distance between public restrooms shall not exceed ½ mile as measured generally parallel to the beach/shore with limited exceptions; and
- 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 projects occurs, with limited exceptions.

The above requirements are reduced for shore protection or 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.

#### Green Acres funding

The proposed rule sets forth additional requirements for funding eligibility and requirements upon disbursement of funds.

To be eligible for Green Acres funding, the rule requires municipalities, counties and nonprofit organizations to:

- Submit a public access plan as described in the section above. To ensure that municipal and county applicants implement the Public Access Plan, the rule requires that the plan be adopted by ordinance; and
- Meet specific provisions of the Public Trust Rights Rule, provide public access to all tidal waterways and their shores that are on or adjacent to lands held by the municipality, county or nonprofit organization, and not enact or adopt ordinances or engage in activities in conflict with the Public Trust Doctrine;

Prior to the disbursement of Green Acres funds:

- Municipal and County recipients are required to adopt the ordinance adopting the public access plan; and
- Municipal recipients are required to record the public access instrument approved by the Department.

Municipal, county and nonprofit organization recipients of Green Acres funding are required to:

- Provide at least one public accessway to the tidal waterway, its shore and the project site across land held by the recipient;

- Record a department approved conservation restriction that maintains the project site, public accessways held by the municipality that lead to or provide access to tidal waterways and their shores, and required parking areas;
- Provide public restrooms and parking for the project site if directed by the department based on the proposed use of the project site and the nature of and extent of public demand.