

Fact Sheet – New Jersey Department of Environmental Protection’s Proposed Public Access Regulations

Purpose of This Rule Proposal

This rule seeks to maintain and enhance the public’s access to coastal and tidal waters in a reasonable, planned manner. It seeks to build on the Public Trust Doctrine, which is a piecemeal, site-specific, common law doctrine, by developing a comprehensive, yet flexible, public access plan for the entire state. These rules are also being proposed in response to a court decision, *Borough of Avalon v. NJ Department of Environmental Protection* and Legislative action (Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq.). Both the courts and the Legislature struck down significant parts of the Department’s current access rules and limited our ability to take certain actions.

Philosophy of Proposed Rule

This rule seeks to enhance public access opportunities by working with municipalities to develop comprehensive municipal public access plans and then to allow them to provide resources to implement those plans. This will allow for targeted access points and opportunities where the public needs and wants access rather than a haphazard approach that required access points in sporadic areas or even where it was unsafe.

The Rule also recognizes that the New Jersey shore and waterfronts are diverse, dynamic areas that provide a wide range of public access opportunities, from beach access to swimming areas, from places to congregate to places for solitude, and from places to launch a boat or kayak to places to fish. It recognizes that legitimate recreational opportunities also include the ability to have restaurants and other public establishments along the waterfront, in appropriate locations. One size does not fit all at the Jersey shore or waterfronts.

Municipal Public Access Plans

The Department is putting together teams of professionals to work with municipalities to help them develop public access plans that are specific to their municipalities and that are intended to meet the needs of their communities and the surrounding region. These plans will identify goals, the needs of the community, inventory existing access points, and provide for an implementation strategy. These plans will have to be adopted by the municipality and approved by the Department to be operational. These plans will help ensure that the public’s access needs are met in a comprehensive and systematic approach.

Benefits of Adopting MPAPs

Municipalities that adopt MPAPs will have the assistance of the Department’s teams of professionals to help plan for public access in their communities. They will also be better able to plan for and control public access by requiring that access opportunities be placed in designated locations rather than at whichever location has just been given a permit. They will also be able to pool money from permittees who will be providing access off-site because on-site access is not appropriate. The DEP will also be working to provide

monies for a Blue Trails Program, as part of the Green Acres program, that will be made available to municipalities to implement their MPAPs. Municipalities that fail to adopt MPAPs will be ineligible for Green Acres funding, will be ranked lower for shore protection funding, and will be ineligible for beach and dune maintenance general permits.

Ocean Public Access

This rule will increase the number of access points to our ocean beaches and will improve the quality of access opportunities. There are currently over 1,000 access points to our beaches and this rule will result in more by working with municipalities in a cooperative manner. No access points will be taken away. Further, by developing plans with municipalities in a cooperative manner, the Rules will result in more public parking, restrooms, and public conveniences. Nothing in this Rule will allow the public to be denied access to waterways in violation of the Public Trust Doctrine nor will the Department's authority to regulate beach fees be diminished. In fact, the Department is codifying the Army Corps of Engineers standard of providing public access points every ½ mile.

Entities that Must Provide Public Access

New or expanding residential and commercial developments will be required to provide public access either on or off-site or to contribute into a fund if a municipality has a MPAP and so provides. New industrial facilities as well as redevelopment sites will also have this obligation. Marinas will also have an obligation to provide for reasonable public access on-site consistent with the operation of their businesses.

Entities that Do Not Have to Provide Public Access

New or existing port facilities will have no public access obligation. They are exempt because they are already meeting their Public Trust Doctrine obligation by providing access points for navigation. Existing and expanding industrial facilities are exempt because public access is generally incompatible with their operations and it would be unfair to impose a public access obligation on an existing facility where no obligation was previously required. Homeland security facilities will not have to provide public access on-site but may have an obligation to provide off-site access or pay into a municipal access fund if they are a new facility. Single family residences and duplexes will also not have a public access obligation.

Limitations Imposed by the Avalon Court

The Appellate Division struck down the Department's authority to require municipalities to impose 24/7 access, provide for parking, and to provide for restroom facilities. Despite this court finding, the Department believes it can achieve substantial results in enhancing substantive access opportunities by working cooperatively with municipalities. The Avalon Court also struck down the Department's authority to condition shore protection funding based on compliance with access regulations.

Web Site

The Department has significantly enhanced its public access web site to provide for detailed information on access points for various activities, amenities, and other information useful for the public to enhance their ability to access and enjoy the State's oceans, bays, beaches and waterways. This information will be updated and improved on a continuing basis. www.state.nj.us/dep/cmp/access