

Borough of Monmouth Beach **Municipal Public Access Plan**



Submitted by: The Borough of Monmouth Beach

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Adoption by the City: Date will be added upon adoption

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Introduction

This document is intended to provide a comprehensive public access plan for the Borough of Monmouth Beach which lays out a vision for providing access to tidal waters and shorelines within the municipal boundary. This Municipal Public Access Plan (MPAP) was developed in accordance with the Coastal Zone Management Rules. The development and implementation of this MPAP supports the policy of local determination of public access locations and facilities, while safeguarding regulatory flexibility.

The Public Trust Doctrine, first set by the Roman Emperor Justinian around A.D. 500 as part of Roman civil law, establishes the public's right to full use of the seashore. The Public Trust Doctrine states that natural resources, including, but not limited to, tidal waterways and their shores, air and wildlife in the State of New Jersey are held by the State in trust for the benefit of all of the people. Further, the Public Trust Doctrine establishes the right of the public to fully utilize these natural resources for a variety of public uses.

The original purpose of the doctrine was to assure public access to waters for navigation, commerce and fishing. In the past two centuries, State and Federal courts in New Jersey have recognized that public uses guaranteed by the Public Trust Doctrine also include public recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating along the various tidal shores.

Through various judicial decisions, the right of use upheld by the Public Trust Doctrine has been incorporated into many state constitutions and statutes, allowing the public the right to all lands, water and resources held in the public trust by the state, including those in New Jersey. The New Jersey Department of Environmental Protection (DEP) encourages municipalities to develop and adopt MPAPs to govern public access within their municipality. This MPAP consists of an inventory of public access locations and plans to preserve and enhance access based on community needs and State standards.

This plan has been developed in collaboration with the DEP, Borough Engineer, Borough Commissioners, and presented to the Planning Board on **date** and approved for submission to the DEP on **date**. Upon receiving approval from the DEP on **date**, the MPAP was incorporated into the **specify element** Element of the Master Plan by resolution on **date**, (see Appendix 1). All public access decisions made within Monmouth Beach after this date will be consistent with this plan.

Importance of Municipal Public Access Plans

The premise of the authorization of MPAPs is that public access to tidal waters is fundamentally linked to local conditions. The development of a MPAP enables the municipality to better plan, implement, maintain, and improve the provision of public access for its residents and visitors. It also informs and/or identifies public access requirements associated with any proposed development or redevelopment project.

Monmouth Beach is responsible for ensuring that public access to the tidal waters within the Borough is in accordance with this plan as approved by DEP and adopted as part of the municipal Master Plan. For each new project that is required to provide public access through a DEP issued Coastal Area Review Act or Waterfront Development permit, Monmouth Beach will provide DEP with a letter confirming its consistency with this MPAP. Upon adoption of this MPAP into the municipal Master Plan, the DEP public access requirement shall be satisfied in accordance with this plan.

I. Municipal Public Access Vision

A. Overview of Monmouth Beach

The Borough of Monmouth Beach is a small beachfront and riverfront community located in Monmouth County, known for its Victorian houses and residential seaside living since the early 1900's. As per the Monmouth Beach Master Plan, the Borough of Monmouth Beach developed historically as a shore resort community and land development patterns today continue to reflect the marine orientated nature of the community in terms of residential, marina and commercial development. Through the years, however, the nature of development within the Borough changed as preferences for new types of residential and recreational development evolved and residences became increasingly oriented to permanent rather than summer seasonal residents. Over time, the make-up of residents in the Borough has evolved to include a mix of seasonal and year-round residents. Today, the community is characterized as a typical beachside, primarily residential community, with a small central business district containing local service businesses, restaurants, and emergency and municipal services.

According to the United States Census Bureau, the total area of the Borough is 2.069 square miles, of which, 1.075 square miles is land and 0.994 square miles (48.03%) is water. As per the 2010 United States Census, there were 3,279 people, 1,494 households, and 854.6 families residing in the Borough. A community survey was conducted as part of the 2017 Master Plan Reexamination Report and found that most residents plan to continue to reside in Monmouth Beach for at least 10 years. It is therefore expected that while the total population in Monmouth Beach will remain stable, the median age in the Borough may continue to increase.

The Borough of Monmouth Beach is an Atlantic Ocean beachfront community located in northeastern Monmouth County. It contains approximately 1.1 square miles of land area, approximately 1.6 miles of frontage along the Atlantic Ocean and 6.8 miles of riverine frontage along the Shrewsbury River and Manahasset Creek. It is bordered to the north by Sea Bright Borough, to south by the City of Long Branch, and the Boroughs of Rumson and Oceanport on the western shores of the Shrewsbury River. Route 36 (Ocean Avenue) runs north and south throughout the Borough and serves as the main artery into and out of the Borough. Beach Rd runs east and west and provides access to Long Branch, Oceanport, and Little Silver. The Seastreak Ferry in Highlands provides access to and from New York City and is a 15- 20-minute

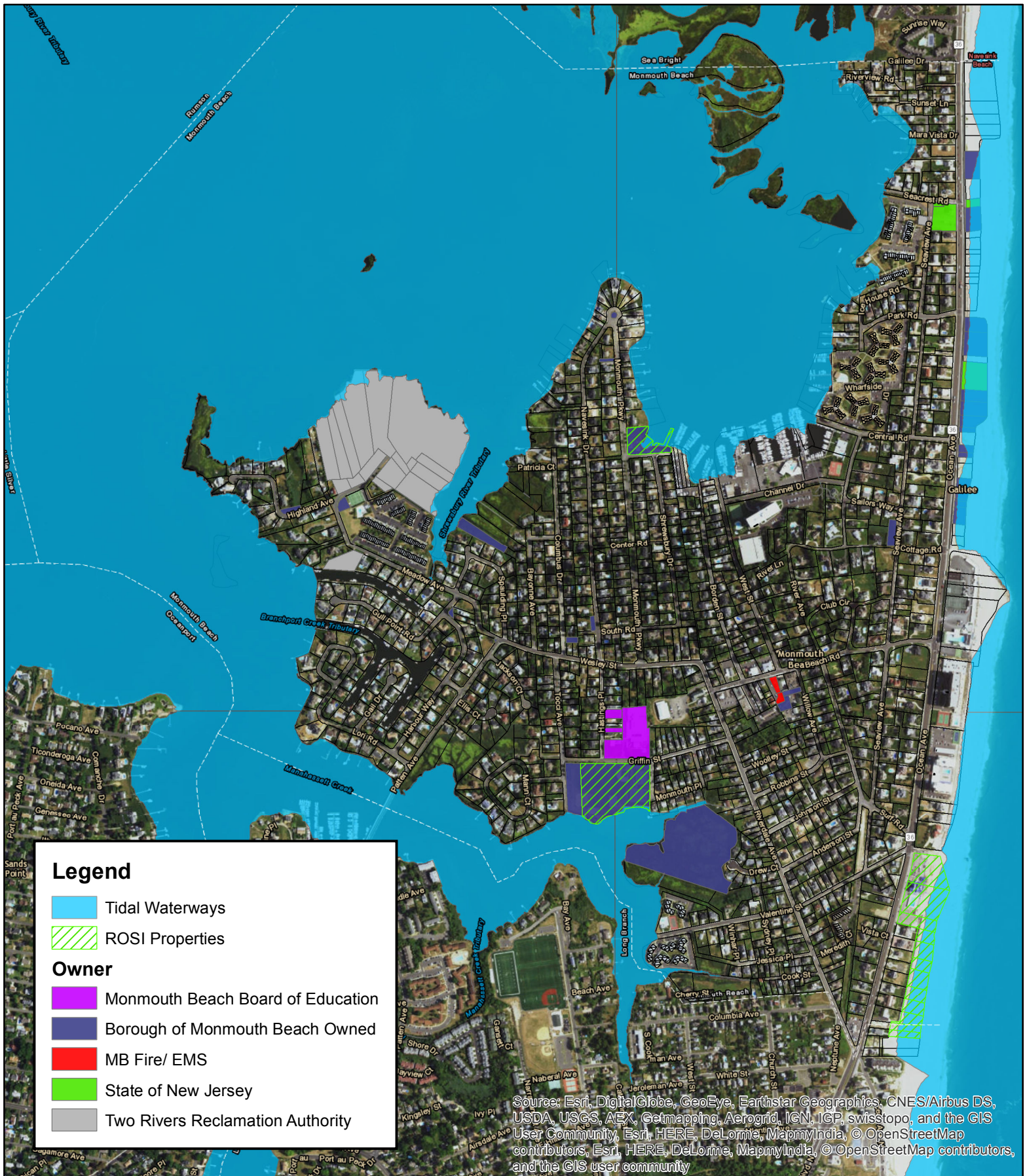
drive to the north. Additionally, NJ Transit train service provides access to and from New York City and makes stops in Long Branch to the south or Little Silver to the west.

The Borough's major source of social activity is their beachfront bathing pavilion. In existence since the early 1960s, it contains a reconstructed two-story, 12,450 square foot open-air pavilion, which includes lockers, showers, interior and exterior restroom facilities, a snack bar, a covered and uncovered deck, and a 68,000+ gallon pool and accompanying baby pool.

The Borough is also the home to the Monmouth Beach Bath and Tennis Club, a private oceanfront facility; and two beachfront high-rise condominium complexes, the Admiralty and the Shores. The high-rise facilities include on-site parking facilities to accommodate their residents and have a public access to the beach included between the complexes.

1. Map 1. Monmouth Beach Tidal Waterways and Lands

Map 1 shows all the tidal waterways within the Monmouth Beach and all lands held by the Monmouth Beach.



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0 500 1,000 2,000 Feet

Prepared by: CLB, 07/26/2017
Source: NJDEP; NJDOT; NJGIN, Monmouth County, Monmouth Beach
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Map 1. Tidal Waterways and Lands Borough of Monmouth Beach Monmouth County, New Jersey

NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.

B. Municipal Public Access Goals and Objectives

1. Goals & Objectives

Through the New Jersey Coastal Zone Management Rules (see N.J.A.C 7:7E-1.1 (c)), the State of New Jersey establishes a broad set of coastal protection goals. The Borough of Monmouth Beach's Municipal Public Access Plan affirms the following goals and objectives specifically addressing public access:

- i. Healthy coastal Ecosystems
 - Manage coastal activities to protect natural resources and the environment
- ii. Effective management of ocean and estuarine resources.
 - Encourage the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities.
- iii. Meaningful public access to and use of tidal waterways and their shores
 - Preserve public trust rights to tidal waterways and their shores;
 - Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities
 - Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;
 - Enhance public access by promoting adequate affordable public facilities and services;
 - Balance diverse uses of tidal waterways and their shores

In addition to those goals outlined within the Master Plan, Monmouth Beach affirms the following State required goals specifically for public access:

- iv. All existing public access shall be maintained to the maximum extent practicable.
- v. Maintain safe and adequate access locations for fishing in those areas where fishing is safe and appropriate.
- vi. Provide clear informative signage for access locations.

Monmouth Beach's Municipal Public Access Plan embraces and reflects these goals and will help preserve, protect, and enhance the public's ability to access the Public Trust lands which surround the Monmouth Beach. The previous goals are compliant with the New Jersey Coastal Zone Management Rules broad set of coastal protection goals (see N.J.A.C 7:7-1.1 (c)).

2. Municipal Master Plan Consistency

The Monmouth Beach Master Plan, dated November 27, 1978, was reviewed for this MPAP. As per the Master Plan, Monmouth Beach should continue to guide new growth and redevelopment of the Borough in order to maintain the shore and resort character of its residential and commercial areas, while ensuring the preservation of the riverine and coastal environment. As part of the planning process, this MPAP has been reviewed and is

consistent with the following goals and policies established in the Monmouth Beach Master Plan:

1. Goals

- a. To encourage municipal action to guide the appropriate use or development of lands with the Borough in a manner which will promote the public health, safety, morals, and general welfare.
- b. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.
- c. To provide sufficient space in appropriate locations within the Borough for residential, recreational, commercial and marina uses and open space, both public and quasi-public.
- d. To encourage coordination of the various public and private procedures and activities shaping land development with the view of lessening the cost of such development and to the more efficient use of land.

2. Policies

The Master Plan goals were supplemented with the following specific policies:

- a. Provision will be made for a variety of residential and non-residential uses which will encourage continuation of Monmouth Beach as a quality residential community and encourage the retention of the shore residential and marine environment which has been a keystone in the historical development of the Borough and has helped establish the quality of life within the Borough.
- b. To consider and evaluate innovative development proposals which would enhance and protect environmental features, minimize energy usage and encourage development densities consistent with existing patterns of development.

3. **2017 Master Plan Amendment Goals:**

The Borough recently completed a Master Plan Reexamination Report and Plan Amendment, considering the impacts of Hurricane Sandy on the Borough. The following additional Master Plan goals were added and are consistent with this MPAP:

- a. Encourage traditional neighborhood elements such as sidewalks, alleys, front porches, public spaces, green spaces, street grids, street trees, and mixed uses that support pedestrian activity, human interaction, public safety, and easy access to goods and services.
- b. Preserve the Borough's natural resources to protect water quality, manage stormwater, reduce the potential of flood damage, protect endangered habitats, and provide open space.

II. Public Access

Public access in Monmouth Beach is provided by the municipality and consists of a variety of access points and facilities including boat ramps, beach walkways, bathroom facilities, a lifeguarded beach, kayak and small boat launches, and two public parks (Griffin Park and Shorelands Park). Monmouth Beach protects and ensures public access through conservation easements, ordinances, beach fees, community clean-ups, yearly inspections, and access easements. Additionally, the Borough has adopted a set of standards for public access stair design, based on current NJDEP guidelines. When a resident builds a new beach access stair using the adopted standards, and agrees to have the new stairs function as public access, the newly constructed stairs will be maintained by the Borough in perpetuity.

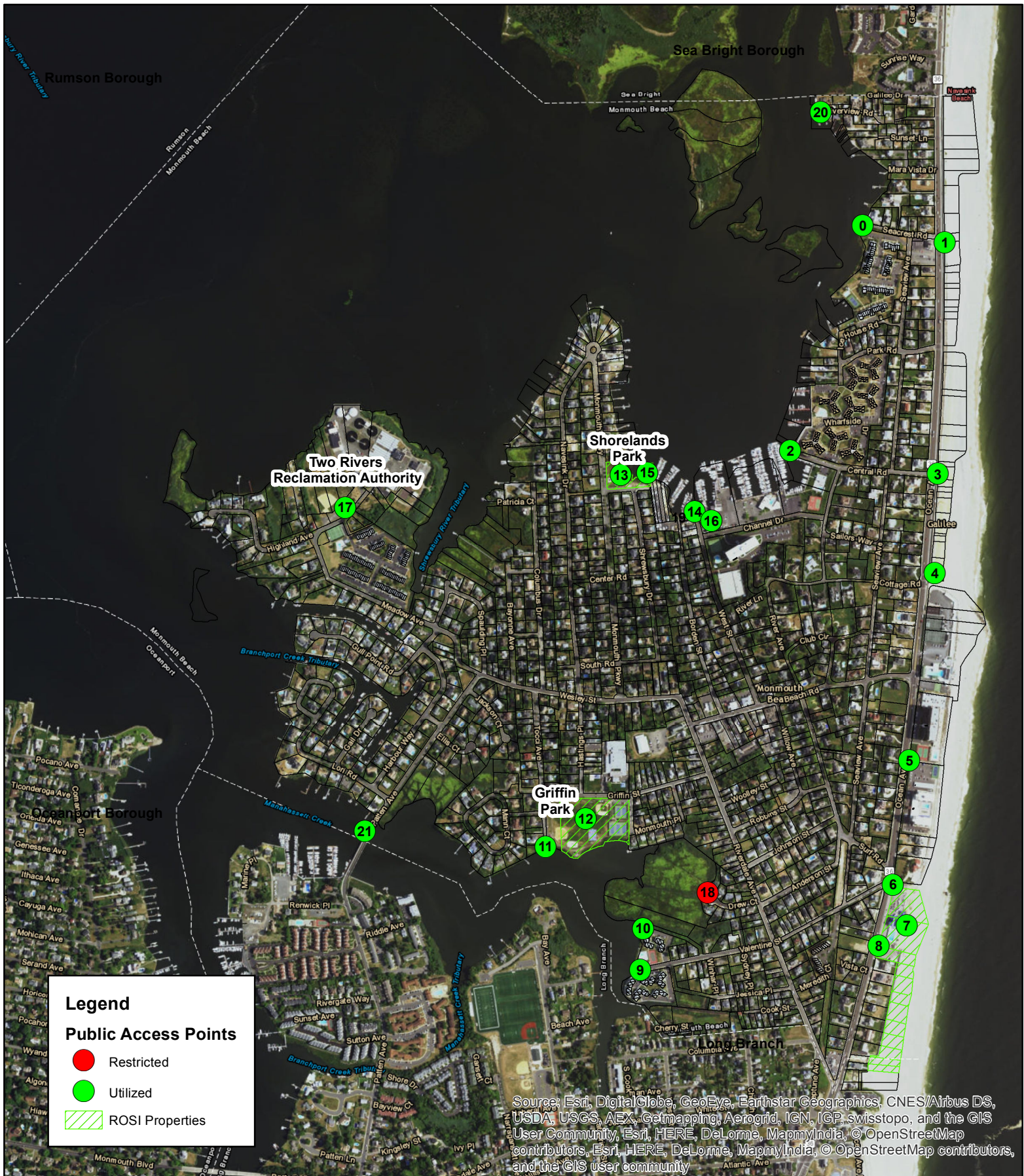


Figure 1. Central Ave Beach Access

The overall goal of this MPAP is to establish Monmouth Beach's plan to maintain and enhance all existing public access locations to and along tidal waterways and their shores.

A. **Public Access Locations**

Map 2 Monmouth Beach Public Access Locations, identifies an inventory of all public access locations within Monmouth Beach, whether they are currently Utilized, Un-utilized, or Restricted to the public, along with their attributes of improvements and activities. See Table 1, located in the Appendix 2, for detailed information for each location.



11 Tindall Road
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0 0.05 0.1 0.2 0.3 0.4 Miles

Prepared by: CLB, 07/26/2017
Source: NJDEP; NJDOT; NJGIN, Monmouth County, Monmouth Beach
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Map 2. Public Access Locations Borough of Monmouth Beach Monmouth County, New Jersey

NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.

Beach Access:

There is a total of six access areas controlled by the Borough designated for public beach access. These public access points have been selected by Borough officials to remain accessible for the public through a combination of ROSI designation and the Borough's ownership and control of properties. The access areas are situated near public parking and/or walkways providing easy access to the beach. All of the public access areas for beach access extend over the seawall where it exists and provide easy access to the beach. The following locations provide public access to the beach in the Borough of Monmouth Beach:

- Seacrest Road and Ocean Avenue (Access point 1 on map)
- Central Road and Ocean Avenue (Access point 3 on map)
- Cottage Road and Ocean Avenue (Access point 4 on map)
- Admiralty and the Shores Condominium Buildings (Access point 5 on map)
- Valentine Street and Ocean Avenue (Access point 6 on map)
- Monmouth Beach Bathing Pavilion (Access points 7 and 8 on map)

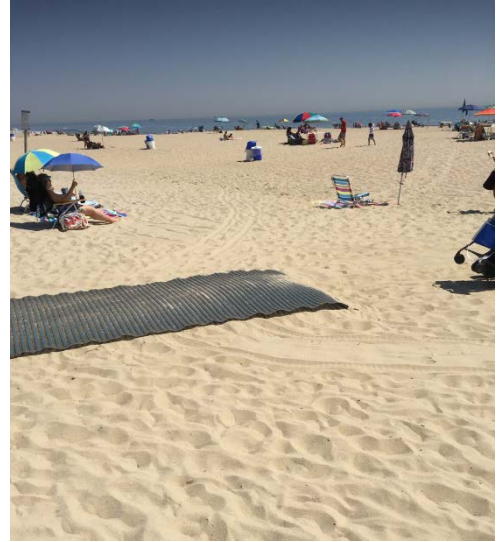


Figure 2. Bathing Pavilion Beach Access

The linear distance between the public access ways, as measured generally parallel to the beach/shore is as follows:

- The public walkways located near Seacrest Road and Central are 1,650 feet from each other.
- The linear distance between Central Avenue and Cottage Road is 800 feet.
- The distance between Cottage Road and the Admiralty Condominiums is 1,400 feet.



Figure 3. Tocci Ave Boat Ramp

- The distance between the Admiralty and Valentine Street is 1,000 feet.
- The distance between Valentine Street and the Monmouth Beach Pavilion is 600 feet.

Boat Ramps:

There are public access areas at the public boat ramps at the end of Tocci Ave. (Access point 11 on map) and at the public boat ramp at West Street. (Access point 15 on map) There is also access for boats at the Shrewsbury River shoreline at Pricilla Brower Park at Shorelands (Shorelands Park) (Access point 13 on the map).

Visual Access:

Two private restaurants (The Beachfront Tavern and The Channel Club) accommodate boating access to their facilities from the Shrewsbury and visual public access to the water.

Additionally, there are three municipal parks located on the Shrewsbury River and Manahasset Creek that provide open views to the water. There is Griffin Park which provides ballfields, playgrounds, restrooms and parking. Shorelands Park provides a playground and waterfront walkway. There is also a public park owned by the Regional Sewerage authority that the Borough leases for baseball/softball games with a gravel parking lot for public parking.

The Patten Avenue Bridge (Access point 21) connecting the City of Long Branch and the Borough of Monmouth Beach across the Manahasset Creek provides visual access through a sidewalk on the western side of the road.



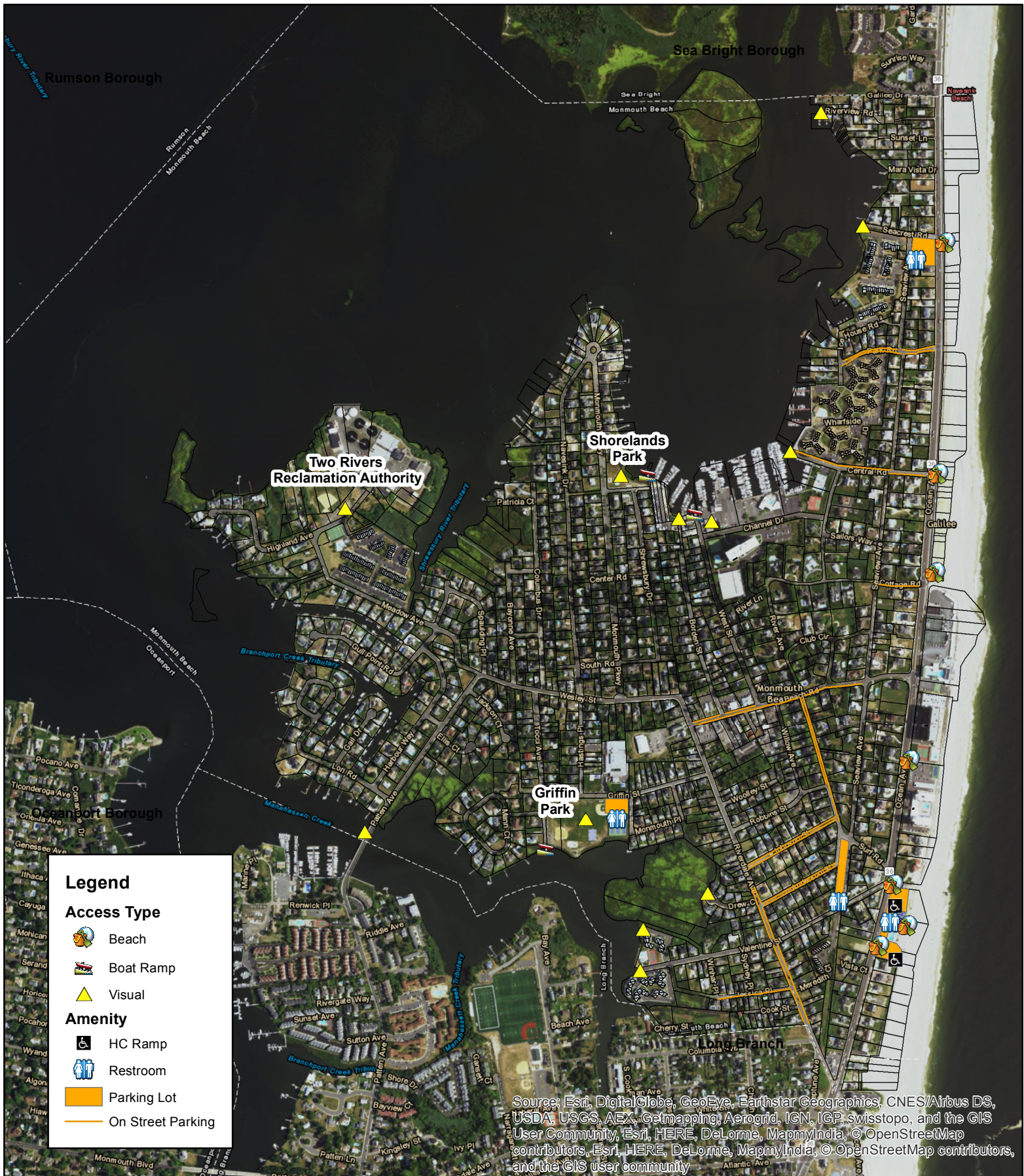
Figure 4. Central Road Visual Access

There is a total of eleven streets within the Borough that end at a tidal waterbody. The majority of the street ends are located along Manahasset Creek and the Shrewsbury River. The following street ends have been identified as providing visual access to the Shrewsbury River and/or Manahasset Creek:

- Riverview Road (Access point 20 on map)
- Seacrest Road (Access point 0 on map)
- Central Road (Access point 2 on map)
- West Street (Access Point 14 on map)
- Borden Street (Access point 19 on map)
- Shrewsbury Drive (Access point 13 on map)
- Tocci Avenue (Access point 11 on map)
- Drew Court (Access point 18 on map)
- Valentine Street (Access point 9 on map)
- Valentine Street (Condos) (Access point 10 on map)

B. Improved Public Access Locations

Map 3 Monmouth Beach's Improved Public Access Locations, provides an inventory of the existing public access locations that currently provide access to public trust lands and waters. See Table 1, located in the Appendix 2, for detailed information this location.



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0 0.05 0.1 0.2 0.3 0.4 Miles

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Source: NJDEP; NJDOT; NJGIN, Monmouth County, Monmouth Beach
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Map 3. Improved Public Access Locations Borough of Monmouth Beach Monmouth County, New Jersey

NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.

In an effort to encourage public access, the Borough has designated walkways to the beach and provided public parking lots and restroom facilities within a reasonable distance of the beach. There are or will be signs placed at all of these public areas informing the public of the designated access to the beach. The public access areas within the Borough are in convenient areas to allow for easy pedestrian access to the tidal waterbody and public beach.

Public Parking and Restrooms

The Borough of Monmouth Beach has three (3) designated public properties available for parking within proximity to public access points throughout the Borough. Additionally, street parking is available where deemed safe and appropriate throughout the Borough. All available street parking is free throughout the Borough. Public restrooms are located at all parking lot locations. Monmouth Beach's parking lots are as follows:



Figure 5. Cultural Center Parking Lot and Restrooms

- Seacrest Road and Ocean Avenue (Monmouth Beach Cultural Center) - This paved and gravel parking lot can accommodate 125 parking spaces. The two portable public restrooms are located on the southwestern corner of the parking lot. It is free to park in this lot year-round.
- Seaview Avenue from Surf Road to Valentine Street – This parking lot is gravel surfaced. This parking lot can accommodate 150 parking spaces and includes one portable public restroom at the site. The one portable public restroom is located on the southern portion of the parking lot near Valentine Street and is located approximately 450 feet from the beach near the Monmouth Beach Bathing Pavilion. During the summer season, this lot requires a seasonal permit which can be purchased at Borough Hall.
- The Borough Pavilion parking lot is located on the east side of Ocean Avenue between Valentine Street and Vista Court and is paved. This parking lot has 150 parking spaces. The Beach Pavilion provides public restrooms for people with beach badges only. There are two newly renovated public restrooms at the pavilion that can be accessed

from the beach and can service nine (9) women and four (4) men within the respective structures. During the summer season, this lot requires a seasonal permit which can be purchased at Borough Hall.

- Griffin Park – This parking lot is paved and provides access to the park and the Tocci Avenue boat launch. Additionally, public restrooms are located at this location. This lot is free year-round.
- The condominium complexes provide a total of 892 (private) parking spaces.

The public parking lots provide a total of 425 parking spaces and 892 private parking spaces. The Borough also provides street parking on all streets west of Ocean Avenue within ½ mile inland of the beach. The street parking provides a total of 691 parking spaces. Currently, parking is prohibited on Seaview Avenue and a portion of Cottage Road because the roadway is too narrow and cannot safely allow for two-way traffic if parking is permitted on one side. All municipal parking lots contain signs indicating that the lot is available for public parking with a beach tag permit.

Signage:

There are public access signs at each stair crossing over the seawall. There are also public access signs located at the Monmouth Beach Bathing Pavilion, Griffin Park, Shorelands Park, the boat ramp at West Street, and the end of Seacrest Road.

The following are examples of signs located throughout Monmouth Beach:



Figure 6. Beach Rules Signs

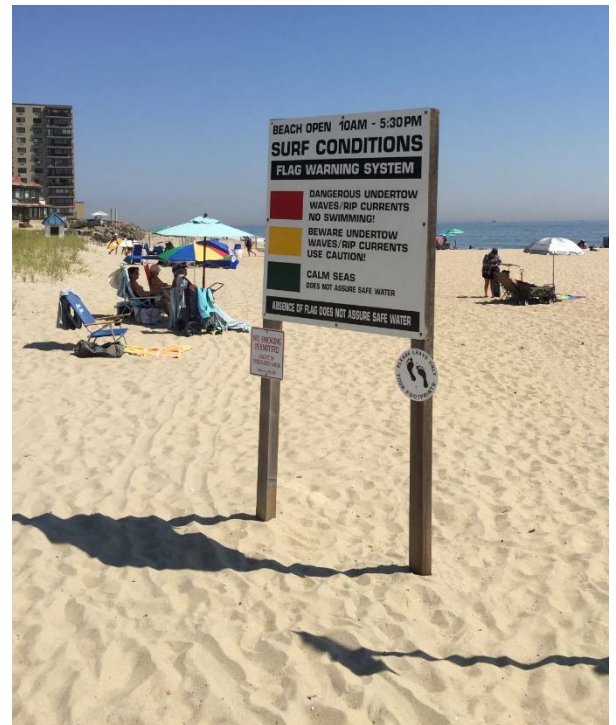


Figure 7. Surf Conditions Sign



Figure 8. Unprotected Beach Entrance



Figure 10. Parking Lot to Beach Access Directional



Figure 9. End of Seacrest Rd.



Figure 11. Tocci Ave Boat Ramp



Figure 12. End of Valentine St.



Figure 13. Beach Access Information

Handicap accessibility:

There are two handicap ramps located at the public access areas near the Monmouth Beach Bathing Pavilion. The ramps are ADA compliant and provide the public access to the beach at two locations near the lifeguards.

Monmouth Beach Bathing Pavilion:

The Monmouth Beach Bathing Pavilion provides bathhouses, bathrooms, lockers, umbrellas, a pool, and a lifeguarded beach for fees to daily and seasonal members during the summer months. This is the only lifeguarded beach in Monmouth Beach. The Bathing Pavilion provides beach access from two sets of stairs/ ramps from the pavilion deck, as illustrated in Figure 15, below, as well ramp



Figure 14. ADA Compliant Beach Access Ramp

access from the southern end of the pavilion parking lot, as illustrated in Figure 14. However, once the Seawall additions are constructed, new access stairs and ramps will need to be built.



Figure 15. Monmouth Beach Bathing Pavilion

C. Limitations to Public Access

The following limitations to public access in Monmouth Beach currently exist:

1. Temporary Restrictions

Under the state approved beach maintenance plan, access to certain areas of Monmouth Beach public beach is restricted at certain times (March 15 to November 30) due to the identified nesting area of piping plovers. Beach maintenance includes activities that Monmouth Beach undertakes to physically maintain the Borough's beaches and dunes, including mechanical beach raking, refuse and large debris removal, dune maintenance, beach nourishment, sand scraping, and oversight of beach access structures. These activities can impact habitat quality, disturb nesting birds, and destroy nests, chicks and plants.

By ordinance, the Borough prohibits dogs, cats and any other animals (except service animals) from Memorial Day through Labor Day on all beaches; and from March 15th through

October 1st on any area of the beach (North and South Beach Zone) where Federal and State listed endangered and threatened species have been identified and marked with signs.

The Monmouth Beach Beach Maintenance Plan is included in Appendix 4 of this report for further information.

2. Permanent Restrictions

The northern section of the Borough has limited access to the public beach due to the lack of parking in this area for safety reasons. Ocean Avenue (NJ state route 36) is controlled by the New Jersey Department of Transportation and parking is not allowed. In this section of the Borough, parallel and perpendicular streets to Ocean Avenue are narrow local roads which are insufficient in width to provide adequate parking while maintaining two-way traffic on the thoroughfare. The dearth of parking in the northern portion of the Borough limits access to those who can access the area without the need to park a vehicle.

In three (3) specific locations in Monmouth Beach, public access will not be provided or otherwise improved due to any one of the following reasons. The three locations are listed as restricted public access locations:

- Public Park located near Meadow Avenue and the Water Treatment Plant - This park is partially restricted because it is owned by the Two Rivers Reclamation Authority and leased by the Borough of Monmouth Beach. There is a baseball field, soccer field and gravel parking lot, which are available to the public. The park provides visual water access to the Shrewsbury River. However, access to a portion of the site is restricted due to Reclamation Authority operations.
- Drew Avenue Street end – there is a large saltwater marsh associated with the Manahassett Creek located at the terminus of Drew Court which provides some visual access to the Creek. However, this spot is restricted, as the Borough does not want to encourage boating or fishing that could be detrimental to the environmental conditions of the site.
- Marina Boat Ramp - This is a private boat ramp located on the Shrewsbury River. There is a public boat ramp that is located near the marina at the end of West Street.

It is important to note that most of the public access points located along the Shrewsbury River and Manahassett Creek are for visual purposes only. Due to the strong currents, deep channels and the salt marshes, access in these locations will create conditions that endanger public health and safety or damage the salt marsh environment.

III. Community Needs Assessment

Monmouth Beach has performed a community needs assessment. The methods and results are described in the following section:

There has been continuing communication among the Borough, the NJDEP Office of Shore Protection and the Army Corp of Engineers that has taken place since the original beach fill project in 1993. The formal agreement executed in 1989 between the Borough and the New Jersey Department of Environmental Protection (see Appendix 5), stipulated the areas of public access that were to be established, and those existing which were to be preserved. The dialogue that took place during the establishment of this agreement has remained consistent throughout subsequent beach nourishment projects, a major Seawall repair (completed jointly between the NJDEP and the Borough), beach access stair replacement, and beach nourishment completed as a result of Hurricane Sandy. Prior to all of these projects, the needs and standards for beach access were examined in each case, and as a result the Borough has created, installed, and replaced when damaged, the public access locations as the opportunity arose. Prior to the 2010 repair to the Seawall in front of the Shores and Admiralty Condominiums, the NJDEP required an assessment of the Public Access and available public parking by the Borough. This document was prepared and submitted to the NJDEP, however, a pending litigation filed against the DEP involving the State's Public Access issue, removed the immediate requirement and the document was not examined and approved by the DEP.

The beachfront within the Monmouth Beach boundary is separated from direct access by a seawall that varies in height from two (2) feet (at the public Pavilion) to twelve (12) feet at its highest point proceeding north on Ocean Avenue. The increasing height restricts the approximately 60 residential homes from direct beach access, which can be gained only through the Borough's public access stairs, or via the few private stairs and decks that remain & have been rebuilt at scattered lengths on the east side of Ocean Avenue. Recognizing this, the Borough has adopted design standards for stair & deck design as part of the municipal ordinance. Any oceanfront property owner that installs new stairs is required to construct to these standards and allow public access thereon. Once constructed, the Borough assumes the annual maintenance of the stairs. The owner of an existing set of stairs that are being re-built has the option to adopt the same procedure only if they agree to allow public access.

The new stair requirement and replacement stair option puts in place a program to address future public access needs.

Parking Analysis:

Since the latest beach nourishment plan in 2013, the area of the beach has significantly increased. Because of the increased size in the beach, Monmouth Beach has seen an influx in visitors, and now has insufficient parking to accommodate the public demand to access the public beaches within Monmouth Beach.

It is important to note that the parking analysis was conducted based on measuring the entire length of the beach within the Borough. The amount of proposed parking associated with this project was calculated by determining the capacity of the beach (3,179,880 SF) located landward of the mean high water elevation. The parking formula was based on the standard calculation of 100 SF / beach inhabitants (31,798 people) and assumes 3 people per car. The residents living within a ½ mile of the beach were also calculated (4 people per dwelling and

condo). The total amount of residents living within a ½ mile of the beach is 4,560 people. The beach capacity minus the residents living within walking distance is 27,238 people. Based on the calculation there is a demand for 9,079 parking spaces within the Borough. The Borough assessed all Borough streets to determine if there are areas that are available for parking that are currently not being utilized. As a result of the analysis, it was determined that there are 2,008 parking spaces available on and off street public parking lots. As such, the borough is lacking 7,072 parking spaces. However, based on the size of the town, the amount of parking spaces and limited street parking, there are no additional locations that could accommodate parking.

Please refer to Appendix 6 for the public parking calculations for additional information on the public parking.

IV. Implementation Plan

Monmouth Beach has created an Implementation Plan composed of Priorities, Preservation of Public Access Locations, Signage, Proposed Access Improvements and Facilities, and Municipal Tools for Implementation as described in the following section:

A. Priorities

Monmouth Beach developed the following priorities:

1. Maintain Existing Public Access

Most of the existing Public Access locations are part of an agreement consummated with the New Jersey Department of Environmental Protection through beach fill and seawall repair agreements that require public access. State aid agreements were executed in 1989, 2009, 2011, and 2016. All State Aid Agreements can be found in Appendix 8.

The 1989 state aid agreement requires the Borough to provide perpendicular and linear access to the waterfront and allows the Borough to charge a reasonable fee for access to these areas. The agreement requires that access be equally open to all people and that use may not be restricted by municipal or county residents, members of a beach club or association or any other group. Access must be provided from the area along and/or inshore of the seawall, along the top of the seawall and onto the beach, and along the entire beachfront, except for any privately granted beaches, which must provide full access to all new beach areas resulting from the beachfill project. Upon completion of beach nourishment project, the NJDEP was responsible for the construction of 3 sets of access stairways leading from the inshore side of the seawall, across the top of the seawall and down to the beach. The NJDEP was also to provide signs showing these designated access points. The following permanent easements were to be acquired as per the 1989 State Aid Agreement:

Block	Lot	Description
1	1	All property east of the westerly toe of seawall.
	2, 2.01	All property east of the westerly toe of seawall.

	15, 15.01	All property east of the westerly toe of seawall.
	3, 4	All property east of the westerly toe of seawall.
	5	Exempt- Borough
	5.01	All property east of the westerly toe of seawall.
	6, 7, 8	All property east of the westerly toe of seawall.
	9, 9.01	All property east of the westerly toe of seawall.
	14	All property east of the westerly toe of seawall.
	10	All property east of the westerly toe of seawall.
	11, 11.01	All property east of the westerly toe of seawall.
	12 ,13	All property east of the westerly toe of seawall.
16	1	All property east of the westerly toe of seawall.
	2	Exempt- Borough
	2.03, 2.02	All property east of the westerly toe of seawall.
	6	Exempt- Borough
	3, 4, 5	All property east of the westerly toe of seawall.
	7, 8	All property east of the westerly toe of seawall.
	9	Exempt- Borough
	10-18	All property east of the westerly toe of seawall.
22	1, 2, 3	All property outshore of a line 25 feet west of the inshore toe of the seawall (this line is extended to the end of the block in the area where the seawall does not exist)
48	1, 2	All property extending eastward from the inshore edge of the crest of the seawall
48.01	11	All property extending eastward from the inshore edge of the crest of the seawall
	9	All property extending eastward from the inshore edge of the crest of the seawall
	10	All property extending eastward from the inshore edge of the crest of the seawall
50	1.01	Exempt- Borough
	3.01	Exempt- Borough
	4.01	Exempt- Borough
	5- 13	All property eastward from a line 25 feet west of the inshore edge of the toe of the seawall.
	5.01- 15.01	Exempt- Borough
	14.02	Exempt Borough
	15.02	Exempt Borough
	14, 15	Not included in project

The 2009 State Aid Agreement for the Monmouth Beach Seawall Maintenance Project identified various points of public access throughout the municipality. It indicates that

Monmouth Beach has approximately 281 parking spaces on public streets within a ¼ miles inland of the project area. The agreement indicates that there is a set of public access stairs leading to the beachfront over the seawall at Cottage Road located approximately 1000 feet north of the northern most project extent and one set of public access stairs leading to the beachfront over the seawall at the Monmouth Beach Bathing Pavilion located approximately 400 feet south of the southernmost project extent. The municipality and Office will construct one set of public access stairs leading to the beachfront over the seawall within the project area between the Shores and Admiralty Condominium Associations. The Borough provides a portable restroom at the Seaview Ave parking located approximately 1,000 feet southwest of the southernmost project extent and restroom facilities at the Borough Pavilion located approximately 600 feet from the southernmost project extent. Monmouth Beach provides easements for public access and use of the entire beachfront, seawall, and tidal lands.

In 2011 a deed of dedication and perpetual storm damage reduction easement served to implement the public trust doctrine and ensure permanent public access, use, and enjoyment of the beach, seawall, and ocean. The agreement states that the easements are granted in perpetuity. In the event the Borough of Monmouth Beach or the State of New Jersey become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. Covenants, terms, conditions, and restrictions of deed shall be binding upon and run in perpetuity with the land. The following blocks and lots were identified as having permanent easements for public access:

Block	Lot
1	3,
	5
	7
16	1
	2
	3
	4
	5
	6
	8,9
	12, 12.01, 13 ,14, 15, 16
50	1.01
	3.01
	4.01
	5.01
	6.01
	7.01
	8.01
	9.01
	10.01
	11.01
	12.01

	13.01
	14.02

The 2016 State Aid Agreement pertains to the Monmouth Beach and Sea Bright seawall. In satisfying its obligations to the agreement, the Borough of Monmouth Beach is required to comply with the NJDEP's Coastal Zone Management Rules (N.J.A.C 7:7 et seq.) including but not limited to: Dunes (7:7-9.16); Overwash Areas (7:7-9.17); Coastal High Hazard Areas (7:7-9.18); Erosion Hazard Areas (7:7-9.19); Beaches (7:7-9.22); Endangered or Threatened Wildlife or Plant Species Habitat (7:7-9.36); Coastal Engineering (7:7-15.11); and Public Access to the Waterfront (7:7-16.9), as amended. Perpetual easements for real property interests necessary for the project, as listed below, have previously been obtained. The easements provide construction access necessary for construction and routine maintenance to be performed by the Municipality, including providing access to the Bureau, the Department, their representatives, employees, agents, and contractors.

Block	Lot
1	1, 2, 3, 4, 5, 5.01, 6, 7, 8, 9, 10, 11, 11.01, 12, 13, 14, 15
16	1, 2, 2.02, 2.03, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18
22	1
48	10
50	1.01, 3.01, 4.01, 5, 5.01, 6, 6.01, 7, 7.01, 8.01, 8.02, 8.03, 9, 9.01, 10, 10.01, 11

The Borough of Monmouth Beach, as a public entity, recognizes its continuing obligation to ensure compliance with the Public Trust Doctrine, including providing public access under the 2016 Agreement in a nondiscriminatory manner, in accordance with the laws of the State of New Jersey.

The remaining few access points (at Elizabeth Brower Park at Shorelands and at West Street), provide river access for boating, recreation, etc. for the surrounding area. The Borough has historically monitored these and the other public access areas to insure the properties are unencumbered, continue to be safe and debris free, and fulfill the intent of providing the public with reasonable free access.

a. Tools

The Borough areas of Monmouth Beach's beachfront, as well as Griffin and Shorelands Parks, and the beach area encompassing the Monmouth Beach Bathing Pavilion are all listed on the Borough's ROSI. The Department of Public Works inspects all open space areas and amenities after major storms and makes repairs as necessary.

b. Cost and Funding

The Borough monitors and maintains all existing public access locations.

2. Preserving Public Access

The opportunity for future open space preservation in Monmouth Beach is small, due to the fact that it is largely built-out and the value of land within the community is high. The Borough of Monmouth Beach is interested in increasing the amount of preserved natural open space and public beach access points within Monmouth Beach. While the opportunity for future open space preservation within the Borough is low, measures should be taken to ensure that existing areas of open space within the Borough remain as such. The 2016 Floodplain Management Plan recommends the Borough revisit its' Vacant Land Assessment (VLA) to determine if there are any parcels which could be targeted for preservation.

a. Tools

Utilize grants and other funding sources if identified parcels become available.

b. Cost and Funding

The Borough will look to a variety of funding sources including Green/ Blue Acres, Monmouth County Open Space Trust Fund, and NRCS.

3. Proposed Locations and Facilities

The Borough of Monmouth Beach would like to increase access stairways over the seawall where they are able.

a. Tools

The Borough has adopted design standards for stair & deck design as part of the municipal ordinance. Any oceanfront property owner that installs new stairs is required to construct to the Borough's design standards and allow public access thereon. Once constructed, the Borough assumes the annual maintenance of the stairs. The owner of an existing set of stairs that are being re-built has the option to adopt the same procedure only if they agree to allow public access. The new stair requirement and replacement stair option puts in place a program to address future public access needs. The existing Stair Ordinance can be found in Appendix 9.

There is a public right-of way over the seawall at Park Road. While the Borough has no plans to install a stairway at this location, this could potentially provide public access in the future.

b. Cost and Funding

The cost to build and install new stairs will be borne by the oceanfront property owner. However, the Borough will be responsible for all future maintenance costs.

Additionally, NJDEP Permit No.1333-05-0005.2-WFD070001/CAF070001 for Block 2, Lot 47.06 required placement of a brick paver walkway for public access to the waterfront and the placement of public access signage at the intersection of Ocean Ave and Seacrest Rd. This property is privately owned, and does not currently have public access signage or the required brick paver. The walkway at this location should be provided as a requirement of the DEP

permit for private development. However, the town has no responsibility for the maintenance of this location.

4. Planned Enhancement to Public Access Locations and/or Facilities

After completion of the seawall extension, the Borough plans to rebuild the access ramps over associated with the Monmouth Beach Bathing Pavilion.

B. Signage

As per Borough policy, Monmouth Beach has provided public access signage at the following locations:

- Seacrest Road Seawall Crossing Stairs
- Central Road Seawall Crossing Stairs
- Cottage Road Seawall Crossing Stairs
- Monmouth beach Bathing Pavilion
- Griffin Park
- Shorelands Park
- Boat Ramp at West Street
- Seacrest Road terminus with Shrewsbury River

Additionally, the Borough is in the process of updating their sign ordinance to require signage at all Public Access locations. The updated sign ordinance can be found in Appendix 7 of this document.

C. Army Corps of Engineers Requirements for Shore Protection Projects

Monmouth Beach has met the ACOE Requirements as follows:

There has been continuing communication among the Borough, the NJDEP Office of Coastal Engineering and the Army Corp of Engineers that has taken place since the original beach fill project in 1993. The last beach replenishment project took place in 2013 and takes place approximately every 10 years. The formal agreement executed in 1989 between the Borough and the New Jersey Department of Environmental Protection (see Appendix 5), stipulated the areas of public access that were to be established, and those existing which were to be preserved. The dialogue that took place during the establishment of this agreement has remained consistent throughout subsequent beach nourishment projects, a major Seawall repair (completed jointly between the NJDEP and the Borough), beach access stair replacement, and beach nourishment completed as a result of super storm Sandy. Prior to all of these projects, the needs and standards for beach access were examined in each case, and as a result the Borough has created, installed, and replaced when damaged, the public access locations as the opportunity arose. Prior to the 2010 repair to the Seawall in front of the Shores and Admiralty Condominiums, the NJDEP required an assessment of the Public Access and available public parking by the Borough. The NJDEP Division of Coastal Engineering is working on extending the seawall from Sea Bright to Monmouth Beach. Upon completion of the seawall project, the public access stairs at the new pavilion will be improved.

V. Relationship to the Other Regional and State Plans

Monmouth Beach MPAP has been reviewed for consistency and has the following relationship to other Regional and State Plans:

2016 Monmouth County Master Plan

Monmouth County adopted a new comprehensive Master Plan in October 2016. The new Plan acknowledges a fundamental change in the approach to regional planning; from one that emphasizes growth management in an era of mass suburbanization to one that is more focused on the redevelopment and revitalization of communities throughout the county. It also recognizes that most of municipalities have planned for and established their desired physical form and character. As a result, many now seek to maintain and enhance their distinct identities through more sustainable approaches in a time characterized by limited growth and constrained public finance. This MPAP is consistent with the following Goals and Objectives of the Monmouth County Comprehensive Master Plan:

Goal # 2: Promote the protection and conservation of natural and cultural resources to help guarantee our long-term sustainability

- Objective 2.1.B: Protect, conserve, and enhance the county's significant, diverse, natural, and scenic resources utilizing sound ecological protection and restoration measures.
- Objective 2.1.D: Encourage the sustainable use of public lands in concert with natural resource protection.

- Objective 2.1.H: Promote public awareness of environmental issues through outreach and educational opportunities including the relationship between the protection and enhancement of natural resources and economic value to the community.
- Objective 2.1.I: Support the creation of municipal land use regulations and programs that protect environmentally sensitive areas based on constraints, building suitability, natural resource value, and environmental criteria.

2001 New Jersey State Plan:

The New Jersey State Plan was last adopted in 2001. The Borough of Monmouth Beach is split between two (2) Planning Areas. South of Central Road is located in the PA1: Metropolitan planning area, while north of Central Road is located in the PA5B: Environmentally Sensitive Barrier Island. The intent of the Metropolitan Planning Area (PA1) is to provide for much of the state's future redevelopment; revitalize cities and towns.; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities. The intent of the Environmentally Sensitive/ Barrier Islands Planning Area (PA5B) is to protect environmental resources through the protection of large contiguous areas of land; accommodate growth in Centers; protect the character of existing stable communities; confine programmed sewers and public water services to Centers; and revitalize cities and towns. The goals and objectives of this Municipal Public Access Plan are consistent with the New Jersey State Plan.

VI. Resolution of Incorporation

The draft Resolution for the incorporation of the MPAP is included in Appendix 1. Monmouth Beach will adopt the MPAP into the Master Plan once the MPAP is approved by the Department.

Approval of this plan does not eliminate the need for any Federal, State, County or municipal permits, certifications, authorizations or other approvals that may be required by the Applicant, nor shall the approval of this plan obligate the Department to issue any permits, certifications, authorizations or other approvals required for any project described in this plan.

Appendix 1

APPENDIX 1
Model Resolution for Incorporating MPAP into Master Plan
(upon adoption the final resolution will replace this model)

Resolution # _____

Title: A RESOLUTION APPROVING THE MUNICIPAL PUBLIC ACCESS PLAN

WHEREAS, the Borough of Monmouth Beach Municipal Public Access Plan (MPAP) was submitted to the Borough Commissioners and reviewed at the regular meeting of {date}, and

WHEREAS, the governing body has approved the plan as submitted, and

WHEREAS, the governing body recognizes the need to make the MPAP an authorized component of municipal decision-making by incorporating it into the municipal master plan,

NOW, THEREFORE, BE IT RESOLVED by the Borough Commissioners of Monmouth Beach, the “Monmouth Beach Municipal Public Access Plan,” a copy of which is attached, is hereby approved.

FURTHER RESOLVED, the MPAP shall be incorporated into the municipal master plan within {element}.

FURTHER RESOLVED a copy of the plan shall be sent to the New Jersey Department of Environmental Protection for review and approval in accordance with N.J.A.C.7.7.

I hereby certify the foregoing to be a resolution adopted by the Borough Commissioners at a meeting held on {date}.

Municipal Clerk

Appendix 2

Appendix 2. Public Access Table

ID	SIGNS	PARKING	STREET	CROSS_STREET	BADGE	SWIMMING	FISHING	SURFING	PLAYGRD	PARK	PIER	BOATLNCH	MARINA	RESTRM	H/C	SHORE-LINE	ACCESS_TYPE	Access
0	Yes		Seacrest Road		No	No	No	No	No	No	No	No	No	No	No	River	Visual	Utilized
1	Yes		Seacrest Road	Ocean Avenue	No	Yes	Yes	Yes						Yes		Beach	Beach	Utilized
2	No		Central Rd		No	No	Yes	No	No	No	No	No	No	No	No	River	Visual	Utilized
3	Yes		Central Rd	Ocean Avenue	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Beach	Beach	Utilized
4	Yes		Cottage Rd	Ocean Avenue	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Beach	Beach	Utilized
5	No	892 private spaces	Between Condos	Ocean Avenue	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Beach	Beach	Utilized
6	Yes	Gravel- 150 spaces	Monmouth Beach Bathing Pavillion		Yes	Yes- Guarded								Yes	at grade access	Beach	Beach	Utilized
7	Yes	Paved- 150 spaces	Monmouth Beach Bathing Pavillion		Yes	Yes- Guarded								Yes	2 public access	Beach	Beach	Utilized
8	Yes		Monmouth Beach Bathing Pavillion		Yes	Yes- Guarded										Beach	Beach	Utilized
9	No		Valentine Street		No	No	No	No	No	No	No	No	No	No	No	River	Visual	Utilized
10	No		Valentine Street Condo Access		No	No	No	No	No	No	No	No	No	No	No	River	Visual	Utilized
11	No		Tocci Avenue	Shrewsbury River	No							Yes	No			River	Boat Ramp	Utilized
12	Yes	Yes	Griffin Street Mem	Shrewsbury River	No	No	NA	No	Yes	Yes	No	Yes	No	Yes	Yes	River	Visual	Utilized
13	Yes	Yes	Shoreland Park	Shrewsbury Drive	No	No	NA	No	Yes	Yes	No	No	No	No	No	River	Visual	Utilized
14	Yes	Yes	West Street	Shrewsbury River	No	No	No	No	No	No	No	Yes	No	No	No	River	Boat Ramp	Utilized
15	Yes	Yes	Shoreland Park	Shrewsbury River	No	No	NA	No	Yes	Yes	No	Yes	No	No	Yes	River	Boat Ramp/ Visual	Utilized
16	No		Beachfront Tavern	Shrewsbury River									Yes			River	Visual	Utilized
17	No	Gravel- 125 spaces	Meadown Avenue		No	No	no	no	no	Yes	no	no	no	no		River	Visual	Utilized
18	No		Drew Court	Shrewsbury River	No	No	No	No	No	No	No	Yes	No	No	No	River	Visual	Restricted
19	No		Borden Street	Shrewsbury River	No	No	No	No	No	No	No	Yes	No	No	No	River	Visual	Utilized
20	No		River View Road	Shrewsbury River	No	No	No	No	No	No	No	Yes	No	No	No	River	Visual	Utilized
21	No	No	Patten Avenue	Shrewsbury River	NO	No	N	No	No	No	No	No	No	No	No	River	Visual	Utilized

Appendix 3


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 newjersey **njdep**
 department of environmental protection



Green Acres Program

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Open Space Database

Facility Name: If followed by - DIV = parcel was entirely diverted; if followed by - P/DIV = parcel was partially diverted; and if followed by - COMP = parcel was a compensation piece for previous diversion.

Interest: CR: Conservation Restriction; Fee: Fee Simple; Lease: Leased land

Type: M - Municipal; C - County; N - Non Profit


County: MONMOUTH

Municipality: MONMOUTH BEACH BORO

Block	Lot	Facility Name	Interest	Type
28	1	SHORELAND PARK	FEE	M
44	37	GRIFFIN PARK	FEE	M
44	46	GRIFFIN PARK	FEE	M
44	47	GRIFFIN PARK	FEE	M
44	48	GRIFFIN PARK	FEE	M
44	49	GRIFFIN PARK	FEE	M
44	50	GRIFFIN PARK	FEE	M
44	51	GRIFFIN PARK	FEE	M
44	52	GRIFFIN PARK	FEE	M
44	53	GRIFFIN PARK	FEE	M
44	54	GRIFFIN PARK	FEE	M
50	1-4.A	MONMOUTH BEACH	FEE	M
50	10A	MONMOUTH BEACH	FEE	M
50	11A	MONMOUTH BEACH	FEE	M
50	12A	MONMOUTH BEACH	FEE	M
50	13A	MONMOUTH BEACH	FEE	M
50	14.01	MONMOUTH BEACH	FEE	M
50	15.01	MONMOUTH BEACH	FEE	M
50	5A	MONMOUTH BEACH	FEE	M
50	6A	MONMOUTH BEACH	FEE	M
50	7A	MONMOUTH BEACH	FEE	M
50	8A	MONMOUTH BEACH	FEE	M
50	9A	MONMOUTH BEACH	FEE	M

The above information is the Recreation and Open Space Inventory (ROSI) on file with Green Acres. Please note that Green Acres relies on the accuracy of the information provided to us by the Local Unit(s) in maintaining the accuracy of our database. Since it is the responsibility of the Local Unit(s) to ensure compliance with Green Acres rules, it is strongly recommended that you confirm this information with the Local Unit(s).

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8/3/2017

NJDEP Green Acres Program - Open Space Database

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Department of Environmental Protection
P. O. Box 402
Trenton, NJ 08625-0402

Appendix 4

BOROUGH OF MONMOUTH BEACH

BEACH MANAGEMENT PLAN

**For the Protection of Federally
& State-Listed Species**

June 2015

IN COOPERATION WITH:

New Jersey Department of Environmental Protection
Division of Fish and Wildlife
Endangered and Nongame Species Program

and

United States Department of the Interior
Fish and Wildlife Service
New Jersey Field Office

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I. INTRODUCTION

A. PURPOSE

The purpose of this beach management plan (BMP) is to provide a framework for cooperation among the Borough of Monmouth Beach (Borough), the New Jersey Department of Environmental Protection's (NJDEP) Division of Fish and Wildlife's (NJDFW) Endangered and Nongame Species Program (ENSP), and the U.S. Fish and Wildlife Service's (USFWS) New Jersey Field Office (NJFO) in the stewardship of federally and State-listed endangered and threatened beach-nesting birds and flora (listed species) occurring on Monmouth Beach beaches. Through this BMP, the parties seek to provide for the long-term protection and recovery of species populations in Monmouth Beach and the State, while balancing potentially conflicting missions. In the BMP, the parties define and describe the roles and responsibilities of the Borough, the ENSP, and the USFWS in the protection and management of listed species within the Borough of Monmouth Beach. Protective statutes and regulations are summarized in Section B of this Introduction.

Through this BMP, the parties endeavor to increase the nesting success of listed bird species and to foster the continued recovery of listed plant species in Monmouth Beach by reducing detrimental human activities and decreasing predation. Through this BMP, the parties hope to effect a progressive shift of specific beach management responsibilities to the Borough and citizens of Monmouth Beach, particularly for those aspects of management that protect listed species from activities permitted, encouraged, sponsored, or performed by the Borough. This BMP is the result of meetings and discussions among the Monmouth Beach Mayor, Borough Administrator, Clerk, Police, Beach, and Public Works Departments; the Conserve Wildlife Foundation of New Jersey (which is a designate of the ENSP for its beach nesting bird program activities); the ENSP; and the USFWS.

This BMP is consistent with the USFWS Recreational (Appendix A) and Fireworks (Appendix B) Guidelines, and with the State Coastal Zone Management Rules (Appendix C). This BMP also satisfies the Terms and Conditions of the September 2002 Programmatic Biological Opinion between the USFWS and the U.S. Army Corps of Engineers, New York District (Corps) (Appendix D) with respect to municipal management planning for Monmouth Beach Borough, and is intended to meet the conditions of permits issued by the NJDEP Division of Land Use Regulation (DLUR) requiring management planning in municipalities receiving beach nourishment. The parties to this BMP acknowledge that the aforementioned guidelines, rules, terms, and conditions may be periodically revised, and agree to adjust the management of listed species as appropriate to ensure continued compliance, including revision of this BMP if necessary.

B. APPLICABLE LAWS AND REGULATIONS

1. Federal

Clean Water Act (33 U.S.C. 1344 *et seq.*) (CWA): Regulates discharges into waters of the United States. The CWA is administered by the U.S. Environmental Protection Agency and the Corps.

Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA): Establishes that endangered and threatened animals and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people. Section 4 provides for listing wildlife and plants as threatened or endangered, including criteria for listing and de-listing species. Section 6 authorizes cooperative agreements and funding for States to establish programs for conservation of threatened and endangered species. Section 7 directs all Federal agencies to consult with the USFWS regarding any proposed Federal action that may affect a federally listed species. Section 9 prohibits take of federally listed wildlife and restricts collection, destruction, and transport of endangered plants. Section 10 establishes permits for scientific collection, and permits for take of listed wildlife that is incidental to an otherwise lawful non-Federal action contingent upon preparation of a Habitat Conservation Plan. Implementing Federal regulations are found at 50 CFR 17 and 50 CFR 402. The Federal list of threatened and endangered species is found at 50 CFR 17.11 and 17.12. The ESA is administered jointly by the USFWS and the National Marine Fisheries Service.

Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712) (MBTA): prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the U.S. Department of the Interior. The MBTA is administered by the USFWS.

2. State

New Jersey Endangered and Nongame Species Conservation Act of 1973, as amended (N.J.S.A. 23:2A *et seq.*): Establishes a list of wildlife species designated by the State of New Jersey as threatened and endangered, and prohibits taking, possessing, transporting, exporting, processing, selling, or shipping listed species. Implementing State regulations are found at N.J.A.C. 7:25-4. The State list of endangered wildlife is found at N.J.A.C. 7:25-4.13; and the State list of threatened wildlife and species of special concern is found at N.J.A.C. 7:25-4.17. The Act is administered by the ENSP.

New Jersey Endangered Plant Species List Act (N.J.S.A. 13:1B-15.151 *et seq.*): Finds that plant species have medicinal, genetic, ecological, educational and aesthetic value to the citizens of New Jersey and that the perpetuation of many native plant species is in jeopardy. The Act establishes an official State list of endangered plants found at N.J.A.C. 7:5C1-5.1. Plant species of concern are those species not listed as endangered and whose populations are monitored by the Natural Heritage Database (see N.J.A.C. 7:5C1-5.3). The Act is administered by the Office of Natural Lands Management (ONLM).

New Jersey Coastal Zone Management Rules (N.J.A.C. 7:7E): Constitute the substantive rules of the NJDEP regarding the use and development of coastal resources, to be used primarily by the DLUR in reviewing permit applications under the New Jersey Coastal Area Facility Review Act (N.J.S.A. 13:19-1 *et seq.* as amended to July 19, 1993) (CAFRA), the New Jersey Wetlands Act of 1970 (N.J.S.A. 13:9A-1 *et seq.*), the New Jersey Waterfront Development Law (N.J.S.A. 12:5-3), Water Quality Certification (Section 401 of the CWA), and Federal Consistency Determinations (Section 307 of the Federal Coastal Zone Management Act (104 Stat. 4779; 16 U.S.C. 3951 *et seq.*)). The Rules are administered by the DLUR.

C. LISTED SPECIES

1. Species Known to Occur on Monmouth Beach Beaches

The following species have been documented on Borough beaches. The parties to this plan anticipate the continuing presence of these species in the Borough and the continued suitability of Borough beaches as habitat for these species.

(a) Piping Plover (*Charadrius melodus*)

Piping plovers are small, territorial shorebirds present on the New Jersey shore between March and August. Nests consist of a shallow scrape in the sand located above the high tide line. Flightless chicks are led by their parents to feeding areas, including the intertidal zone. The plover diet consists of invertebrates. Between one and five pairs of plovers have nested in Monmouth Beach (combined North and South beaches) since 1997. In 2014, one nesting pair within the Monmouth Beach North Protected Zone produced four chicks, two of which survived until fledging. During the 2015 season, as of mid-June, one piping plover nesting pair within the Monmouth Beach North Protected Zone has produced three chicks and a second pair is attempting to nest. Piping plovers are federally listed as threatened under the ESA, State-listed as endangered, and protected by the MBTA.

(b) Least Tern (*Sterna antillarum*)

Least terns are small, colonial-nesting sea birds, present on the New Jersey shore between April and September. Nests consist of a shallow scrape in the sand located above the high tide line. Flightless chicks remain in the colony, where they are fed by their parents. The least tern diet consists of fish. Tern colonies in Monmouth Beach (combined North and South beaches) have ranged from 8 to over 868 peak numbers of birds since 1996 (some of these colonies spanned the border with Sea Bright Borough). Least terns are State-listed as endangered and protected by the MBTA.

(c) American Oystercatcher (*Haematopus palliatus*)

American Oystercatchers are territorial nesters, nesting on New Jersey beaches between April and August. They make their nests on beaches by scraping a shallow depression in the sand just above the high tide line and also nest on back-bay islands. In 2014, three pairs of American oystercatchers nested within the Monmouth Beach North Protected Zone, but all three nests failed to produce chicks. During the 2015 season, as of mid-June, one nesting pair of oystercatchers has been observed within the Monmouth Beach North Protected Zone. Oystercatchers are a State species of special concern and protected by the MBTA.

(d) Seabeach Amaranth (*Amaranthus pumilus*)

Seabeach amaranth is an annual plant, visible on New Jersey's Atlantic coastal beaches between May and November. Seabeach amaranth is usually found growing in nearly pure sand. The species requires sparsely vegetated upper beach habitat that is not flooded during the growing season. Seeds are dispersed by wind and water, and are present on the beach year-round. Seabeach amaranth populations in Monmouth Beach have ranged from 0 to

almost 750 plants since the species was first observed in the Borough in 2001. Seabeach amaranth is federally listed as threatened under the ESA and State-listed as endangered.

(e) Seabeach Knotweed (*Polygonum glaucum*)

Seabeach knotweed is an annual plant visible on the New Jersey shore between May and November. Most seabeach knotweed occurrences in New Jersey are on sandy beaches where the plants generally occur above the limit of the tide. Seabeach knotweed was last documented in Monmouth Beach in 2005 (44 plants), but even greater numbers of plants (946 plants) were observed in 2004. In addition, the population of several hundred plants occurred within the Northern section of Monmouth Beach; this population may extend partially into Sea Bright. Seabeach knotweed is State-listed as endangered.

(f) Seabeach sandwort (*Honckenya peploides*):

Seabeach sandwort is found in beach habitats and is State-listed as endangered.

2. Species That May Potentially Occur on Monmouth Beach Beaches

The following species have not been documented in the Borough, but could become established in the future. The parties to this plan will work cooperatively to manage these species if they colonize beaches. The habitat management and species protections laid out in this plan are expected to be sufficient to protect the following species if they become established; therefore, plan revision would likely not be necessary.

- Black skimmer (*Rynchops niger*): colonial beach-nesting sea bird, State-listed as endangered and protected by the MBTA.
- Seabeach evening primrose (*Oenothera humifusa*): beach and dune habitats, State-listed as species of concern.
- Sea-milkwort (*Glaux maritima*): beach and salt marsh habitats, State-listed as species of concern.
- Seabeach purslane (*Sesuvium maritimum*): beach habitats, State species of concern.

D. GOVERNMENT ENTITIES

Borough: Borough, Monmouth County, New Jersey.

Corps: U.S. Army Corps of Engineers, New York District. The Corps Regulatory Program issues permits for placement of fill material in waters of the United States and for construction activities in navigable waters, pursuant to Section 404 of the Federal CWA and Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151, as amended; 33 U.S.C. 403 *et seq.*), respectively. Corps permits are required for activities such as wetland fill, beach nourishment, and construction or maintenance of ocean groins and jetties. The Corps Civil Works Program carries out shore protection, flood control, navigation, and ecosystem restoration projects as directed by

Congress, including the Atlantic Coast of New Jersey Beach Erosion Control Project that includes beach nourishment in the Borough.

DLUR: New Jersey Department of Environmental Protection, Division of Land Use Regulation. The DLUR administers the State permitting program for activities in wetlands and within New Jersey's Coastal Zone. Permits from the DLUR are required for activities such as disturbance of wetlands, beach and dune maintenance, construction or maintenance of structures on the beach, beach nourishment, and construction or maintenance of groins, jetties, seawalls, and bulkheads.

ENSP: New Jersey Department of Environmental Protection, Division of Fish and Wildlife, Endangered and Nongame Species Program. The ENSP is responsible for listing, monitoring, and managing State-listed wildlife species, and administration of the New Jersey Endangered and Nongame Species Conservation Act.

NJDEP: New Jersey Department of Environmental Protection. The NJDEP is the State Department that oversees environmental laws and policies, and includes the DLUR, the NJDFW, and the ONLM.

NJDFW: New Jersey Department of Environmental Protection, Division of Fish and Wildlife. The NJDFW is charged with protecting and managing the State's fish and wildlife to maximize their long-term biological, recreational, and economic values. In addition to the ENSP, the NJDFW includes the Bureaus of Wildlife Management, Freshwater Fisheries, Marine Fisheries, and Shellfisheries; and the Offices of Information and Education, Environmental Review, and Fish and Wildlife Health and Forensics.

NJFO: New Jersey Field Office, Ecological Services, U.S. Fish and Wildlife Service. Within New Jersey, the NJFO's responsibilities include review of Federal water-resources projects, monitoring and management of federally listed species (both wildlife and plants), and administration of the ESA.

OEM: Office of Emergency Management. The OEM is the Borough office responsible for managing States of Emergency.

ONLM: New Jersey Department of Environmental Protection, Division of Parks and Forestry, Office of Natural Lands Management. The ONLM is responsible for administration of the New Jersey Natural Heritage Database on biodiversity resources, promulgation and amendment of New Jersey's Endangered Plant Species List, and administration and management of State-owned lands designated to the Natural Areas System.

USFWS: U.S. Fish and Wildlife Service. The USFWS is the principal agency through which the Federal Government carries out its responsibilities to conserve, protect, and enhance the nation's fish and wildlife and their habitats for the continuing benefit of the people. The primary responsibilities of the USFWS are migratory birds, endangered species, certain marine mammals, anadromous fish, and wildlife resources on Federal land.

E. ACRONYMS AND DEFINITIONS

beach nourishment: addition of sand in designed contours to extend a beach and the nearshore shallows seaward.

Biological Opinion: a document that includes: (1) the opinion of the USFWS as to whether or not a proposed Federal action is likely to jeopardize the continued existence of federally listed species; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on federally listed species. Issuance of a Biological Opinion concludes formal consultation between the USFWS and a Federal action agency pursuant to Section 7 of the ESA, and an accompanying Incidental Take Statement authorizes, if appropriate, limited incidental take of federally listed wildlife in the course of implementing the Federal action.

brood: a group of young birds hatched at one time and cared for by the same parents.

Conservation Measures: actions to benefit or promote the recovery of listed species that are included by a Federal agency as an integral part of a proposed action. These actions will be taken by the Federal agency and serve to minimize or compensate for project effects on the federally listed species impacted by the proposed action. Conservation Measures are usually included in a Biological Opinion.

consultation: the process required by Section 7 of the ESA through which the USFWS works with a Federal action agency to determine if a proposed Federal action is likely to adversely affect a listed species under USFWS jurisdiction, or jeopardizes the continued existence of such a species. Federal actions include actions that are carried out, funded, or authorized by a Federal agency.

Declared Emergency: a state declared by Borough, County, State, and/or Federal governments in anticipation of, during, or following an event that threatens human health, safety, or property.

Throughout this plan, “State of Emergency” (SOE) signifies a state of Declared Emergency. The term “emergency” is defined below.

Within the Borough, the Mayor or Office of Emergency Management (OEM) declares all Emergencies, and the OEM manages the Emergency. A copy of the Emergency Declaration Document is on file. Once the Emergency has been declared, the OEM, Mayor, or Chief of Police confirm and notify the Borough Clerk. Activities responding to a State of Emergency (SOE) may include the following:

SOE Beach Nourishment: placement of clean sand on the beach to protect human life or health or public or private structures, signified by a Declared Emergency and eligibility for DLUR permits under N.J.A.C. Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. Emergency Beach Nourishment is included in the definition of “SOE Post-storm Beach or Dune Restoration.”

SOE Clean-up: removal from the beach of large debris that poses a threat to human health or safety using vehicles and equipment, signified by a Declared Emergency.

SOE Raking: mechanical beach raking necessary to remove from the beach debris that poses a threat to human health or safety (e.g., medical waste, hazardous materials), signified by a Declared Emergency.

SOE Post-storm Beach or Dune Restoration: activities listed at Section 7:7E-3A.3(b) of the New Jersey Coastal Zone Management Rules to restore beaches or dunes impacted by coastal storms with a recurrence interval equal to or exceeding a 5-year storm event, signified by a Declared Emergency and eligibility for DLUR permits under Section 7:7E-3A.3. Placement of sand and other materials (beach nourishment) and sand scraping (defined below) are among the activities listed at 7:7E-3A.3(b).

emergency: a situation presenting imminent risk to human life, health or safety.

emergency vehicle: a vehicle responding to an emergency.

essential vehicle: a vehicle required to provide for safety, law enforcement, maintenance of public property, or access to private dwellings not otherwise accessible.

feral: wild, untamed or un-owned, referring to animals that are normally pets such as cats or dogs.

Fireworks Guidelines: the USFWS document entitled *Guidelines for Managing Fireworks in the Vicinity of Piping Plovers and Seabeach Amaranth on the U.S. Atlantic Coast* (Appendix B).

fledged: able to fly. Piping plover, least tern, and black skimmer chicks are presumed to have survived the nesting season once fledged; monitoring and management restrictions are usually relaxed once all chicks are fledged. For management purposes, piping plover chicks are considered fledged at 35 days of age or when observed in sustained flight for at least 15 meters, whichever occurs first.

growing season: the time of year when seabeach amaranth is present on the beach; usually May 15 through November 30.

harass: an act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

harm: an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

incidental take: take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity.

listed species: for the purposes of this plan, a species that is: (1) listed or proposed for listing as endangered or threatened, or designated as a candidate for listing, by the USFWS pursuant to the ESA and its implementing Federal regulations; (2) listed as endangered or threatened by the State

pursuant to the New Jersey Endangered and Nongame Species Conservation Act and its implementing State regulations; (3) listed by the State as endangered pursuant to the New Jersey Endangered Plant Species List Act; and/or (4) listed as a State species of concern by the ENSP or the ONLM.

nesting area: an area occupied by nesting piping plovers, least terns, and/or black skimmers in the current or recent nesting seasons, including areas used for courtship, territorial displays, egg-laying and incubation, and chick brooding and foraging.

nesting season: the time of year when nesting piping plovers, least terns and/or black skimmers are present on the beach; usually March 15 through August 31 if both plovers and colonial nesters are present.

predator enclosure: staked wire fencing that encircles a piping plover nest as a barrier to predators while permitting passage of plover adults and chicks; netting is normally installed on the top of the structure to prevent entry by avian predators.

predator management: activities to reduce the adverse effects of predators on listed bird species, including but not limited to monitoring, minimizing food sources, use of predator enclosures, and predator population control through trapping or other means of removal.

productivity: a measure of piping plover, least tern, and black skimmer nesting success measured as chicks fledged per pair of nesting birds.

Programmatic Biological Opinion: a Biological Opinion that addresses a Federal program rather than a single Federal action; such programs typically guide implementation of future agency actions by establishing standards, guidelines, or governing criteria to which future actions must adhere.

Recreational Guidelines: the USFWS document entitled *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act* (Appendix A).

routine: not associated with a State of Emergency (SOE).

sand scraping: mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore; also known as sand mining or sand transfer.

Sandy Hook: the Sandy Hook Unit of Gateway National Recreation Area, managed by the National Park Service.

service animal: any guide dog, signal dog, or other animal individually trained to provide assistance to a person with a disability (*e.g.*, seeing-eye dogs).

SOE: State of Emergency; see Declared Emergency.

supervised beach: a life-guarded bathing beach.

symbolic fencing: string-and-post fencing marked with flagging and signs, intended to protect listed species by restricting human entry into an area.

take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a listed species, or attempt to engage in any such conduct.

Terms and Conditions: specific methods by which a Federal action agency must implement actions necessary or appropriate to minimize the extent of incidental take of federally listed wildlife in the course of carrying out an otherwise lawful Federal action. Terms and Conditions are usually included in an Incidental Take Statement that accompanies a Biological Opinion.

wrack: organic material including seaweed, seashells, driftwood, and other materials deposited on beaches by tidal action; often forms a “wrack line” along the high water mark.

II. MANAGEMENT ZONES

The Borough of Monmouth Beach management zones are identified based on their current and historical use by beach-nesting birds and the re-establishment of seabeach amaranth on Borough beaches (Fig. 1). The relative importance of protective management in each zone is based on existing human uses, habitat conditions, and past distribution of listed species.

Monmouth Beach North: *Protected Zone* (approximately 0.8 miles)

This zone will be managed to promote the protection and recovery of listed species and the enhancement of their habitat. Recreational uses will be accommodated consistent with species protections.

This zone extends from the Borough of Sea Bright border at Galilee Drive to Cottage Road, at the northern edge of the Monmouth Beach Bath and Tennis Club, located at 65 Ocean Avenue.

Monmouth Beach Central: *Recreational Zone* (approximately 0.6 miles)

This is the Borough’s developed recreational zone, and will be managed primarily for recreation. Any listed species documented in this zone will receive protection as required by applicable State and Federal laws and regulations.

This zone extends from the northern edge of the Monmouth Beach Bath and Tennis Club (Cottage Road) to the southern edge of the Monmouth Beach Bathing Pavilion, located at 29 Ocean Avenue.

Monmouth Beach South: *Protected Zone* (approximately 0.2 miles)

This zone will be managed to promote the protection and recovery of listed species and the enhancement of their habitat. Recreational uses will be accommodated consistent with species protections.

This zone extends from the southern edge of Monmouth Beach Bathing Pavilion /Beach, near Vista Court, to the City of Long Branch border at 1 Ocean Avenue.

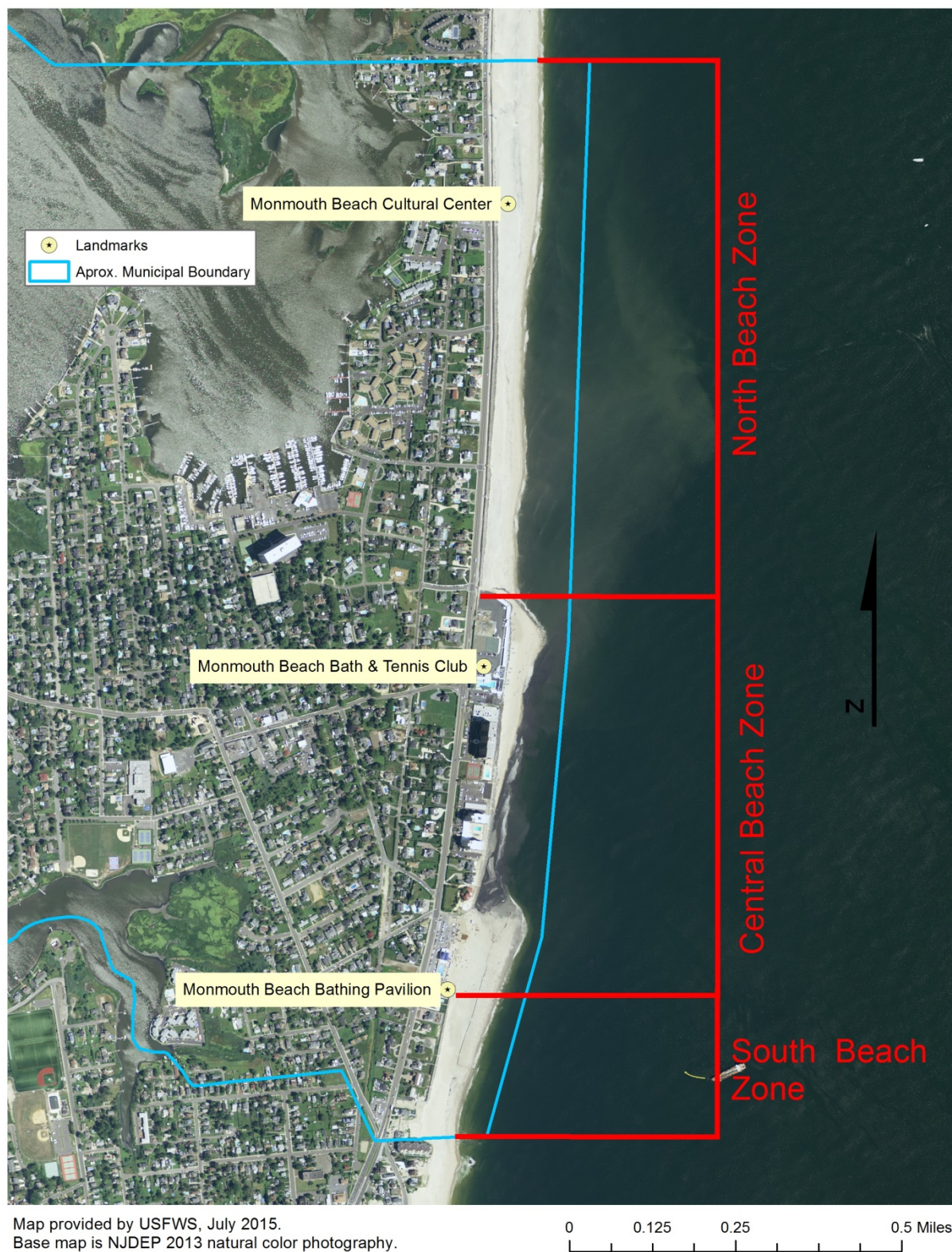


Figure 1. Monmouth Beach Borough Beach Management Zones

III. RECOVERY GOALS

The parties to this BMP consider the following to be realistic, sustainable targets for listed species on the Borough of Monmouth Beach beaches. Populations of listed species above these goals will continue to be protected in accordance with applicable State and Federal laws and regulations.

Piping plovers:

- 3 – 4 pairs in North Beach Zone
- 1 – 2 pairs in South Beach Zone
- productivity greater than or equal to the USFWS recovery goal of 1.5 chicks fledged per pair
- Note: In addition to the recovery goal of nesting pairs, the protection of chicks that may move from the northern end of Seven Presidents Oceanfront County Park property and/or from the southern end of the Borough of Sea Bright onto the Borough's beaches is a priority for the North and South Beach Zones.

Least terns:

- at least one colony in North and/or South Beach Zones
- at least moderate productivity (≥ 0.5 to ≤ 1.00 chicks fledged per pair) when a colony is present

Seabeach amaranth:

- long-term average population size of at least 350 plants
- minimum one-year population size of 100 plants

IV. MANAGEMENT ISSUES

Management issues form the basis or framework for this BMP. The major issues are defined, and the roles and responsibilities of each party to the plan are set forth to address each issue.

A. BIOLOGICAL MONITORING

Background

Basic biological information is routinely collected about listed species on Borough beaches. The ENSP monitors beach-nesting birds to determine habitat use, numbers of nesting pairs, nest locations, and reproductive success. The USFWS surveys and monitors (when funding is available) seabeach amaranth to determine plant numbers, size, reproductive status, location, and condition. Additional plants of concern that may occur are recorded incidentally during the USFWS surveys. This information is essential in evaluating species trends and progress towards recovery, and assessing the effectiveness of beach management practices.

ENSP and USFWS Actions

- The ENSP will continue intensive surveys, monitoring, and management of nesting birds throughout the Borough, as per agreement with the USFWS pursuant to Section 6 of the ESA and pending continued availability of adequate funding. The ENSP currently staffs Borough nesting areas at least 5 days per week during the nesting season, including weekends and holidays.
- The USFWS will conduct (subject to available funding) annual seabeach amaranth surveys that include Monmouth Beach Borough to monitor population trends and distribution, and plans to initiate limited early-season survey work to identify seabeach amaranth plants at risk of damage or destruction.
- The ENSP and the USFWS will promptly report any new or expanded occurrence of a listed species to the Borough, particularly within the Central Beach Zone.
- The ENSP and the USFWS will regularly report relevant biological information to the Borough (see Section G).

B. PREDATOR MANAGEMENT

Background

Predation is a major factor impairing piping plover and least tern productivity in Monmouth Beach. The primary predators in Monmouth Beach are red foxes (*Vulpes vulpes*), feral cats (*Felis catus*), gulls (*Larus spp.*), and crows (*Corvus spp.*). Other potential predators include raccoons (*Procyon lotor*), Norway rats (*Rattus norvegicus*), and striped skunks (*Mephitis mephitis*). Reducing predation will involve reducing or eliminating provisions of food from refuse and hand feeding, using predator exclosures, educational outreach, and if necessary, predator removal.

Predators (herbivores) of seabeach amaranth in Monmouth Beach include moth caterpillars belonging to the Lepidopteran families Noctuidae (cutworms) and Pyralidae (webworms), and aphids. Other potential herbivores include grasshoppers and mammals. Between 2 and 3 percent of plants in Monmouth Beach have shown evidence of herbivore damage in recent surveys. Seabeach amaranth may also be affected by fungal diseases.

Borough Actions

- The Borough will review existing municipal ordinances regarding cats and will revise these or enact new ordinances or policies as appropriate to: (a) promote or require a “cats indoors” policy among residents; (b) prohibit release or abandonment of cats in the Borough; and (c) prohibit feeding of feral cats (Borough Ordinance no. O-15-06 prohibits the feeding of wildlife [“including all animals that are neither human nor domesticated”]).
- The Borough will emphasize the importance of its ordinance prohibiting dogs, cats and any other animals on the beach.

- By ordinance, the Borough prohibits dogs, cats, and any other animals (except service animals) from Memorial Day through Labor Day on all beaches; and additionally from March 15 through October 1 on any area of the beach (North and South Beach Zone) where Federal and State-listed endangered and threatened species have been identified and marked (by Borough posted signs and/or ENSP fencing) as being present. (Borough Ordinance no. O-99-07).
- All animals, including service animals, are required to be leashed and are prohibited from entering fenced areas.
- The Borough will coordinate annually with the ENSP to determine if additional areas have become occupied by nesting birds and require a pet prohibition between March 15 and Labor Day.
- Monmouth Beach will enforce the seasonal prohibition of animals on the beach through the Borough Police Department, and will take any other necessary steps to provide adequate enforcement such as posting signs regarding the pet prohibition at each entrance to the beach.
- Through the Animal Control Officer, the Borough will conduct removal of cats in problem areas when necessary, preferably through humane live trapping. If the Animal Control Officer is unable to assist, the Borough will explore other alternatives with the ENSP assistance. Primary responsibility for control of animal populations lies with the Borough.
- Consistent with current State and local regulations, the Borough will not actively block measures to control predator populations recommended and/or undertaken by the ENSP or the USFWS. The Borough will not enact any new ordinances to prohibit predator management activities.
- By way of signature to this BMP, the Borough of Monmouth Beach gives the ENSP and the USFWS written permission to engage in predator control activities on Borough beaches, including removal of feral cats, foxes, and other predators including herbivores of seabeach amaranth.
- See also Education and Outreach (Section F).

ENSP Actions

- The ENSP will continue to monitor the extent of predation on nesting birds within Monmouth Beach (Section A), and will include this in the information reported to the Borough (Section G).
- The ENSP will erect predator exclosures on piping plover nests where and when appropriate. Use of predator exclosures to reduce plover nest predation will generally be tried prior to undertaking predator removal, unless the ENSP has cause to believe that exclosures could worsen predation pressures (certain predators are known to target exclosures). In addition, control of predator populations may be necessary to reduce

predation on plover chicks, or on least tern or black skimmer eggs and chicks, none of which are protected by exclosures.

- Any predator population control will be the responsibility of the ENSP or with the assistance of USFWS. The ENSP will pursue control when necessary and appropriate.
- The ENSP will notify the Borough Clerk and Monmouth Beach Police at least 2 days before engaging in any predator control activities; by way of this BMP the Borough grants the ENSP permission for these activities, as indicated above. The ENSP will adopt the Borough's recommendations for timing, methods, or other aspects of control operations to the extent possible.
- If the Borough is unable to obtain assistance from Monmouth Beach's Animal Control Officer with regard to cat control, the ENSP will assist the Borough in exploring other alternatives, including carrying out removal with the ENSP or contract staff.

USFWS Actions

- Upon request and within the limits of available staff time and funding, the USFWS will assist the Borough and/or the ENSP in control of predator populations, such as arranging for removal through the U.S. Department of Agriculture's Animal and Plant Health Inspection Service or other qualified vendors.
- In the course of annual seabeach amaranth surveys, the USFWS will continue to monitor the extent of seabeach amaranth herbivory and disease within Monmouth Beach (Section A), and will include this in the information reported to the Borough (Section G).
- In the course of annual seabeach amaranth surveys, the USFWS will note any observations of herbivory and disease of other listed plant species (Section A), and report this information to the Borough (Section G) and the ONLM.

If herbivory and/or disease threaten the seabeach amaranth recovery goals specified in this BMP, the USFWS will recommend and/or implement necessary actions, potentially including application of appropriate pesticides. By way of this BMP, the Borough grants the USFWS permission for these activities, as indicated above. The USFWS will initiate early coordination with the Borough upon detection of an herbivory/disease problem, and will include the Borough in the planning of any proposed control measures. The USFWS will notify the Borough Clerk in writing at least 10 days before implementing any herbivore/disease control activities, and will adopt the Borough's recommendations for timing, methods, or other aspects of control operations to the extent possible. The USFWS will post signs in any treated areas as necessary and appropriate. Any USFWS actions are subject to the Intra-Service consultation requirement of Section 7 of the ESA, as well as all applicable regulations regarding pesticide handling and use.

C. HUMAN DISTURBANCE

Background

The broad area of human disturbance includes any human activities that directly or indirectly harm or harass listed plants or birds, including interference with incubation and care of chicks. Recreational beach users and municipal employees may directly harm listed species by crushing plants or eggs. In addition, unfledged plover, tern, skimmer, and oystercatcher chicks are highly sensitive to disturbance. Nesting birds may experience low success if exposed to frequent harassment by vehicles, pedestrians, sunbathers, pets, or kites.

Borough Actions

- The Borough will assist the ENSP with pre-season symbolic fencing, or will identify volunteers to assist with this task (see ENSP Actions, below).
- In the event that seabeach amaranth plants remaining on the beach after August 31 are threatened by human activities (e.g., a large population of plants near a beach access structure, a Borough-sponsored clean-up or event in an area of species occurrence), the Borough will erect and maintain symbolic fencing, posted with appropriate signs, as recommended by the USFWS (in addition to any seabeach amaranth or other listed plants that are incidentally fenced areas by ENSP). The Borough will remove fencing once all plants are gone or the threat is abated, as recommended by the USFWS.
- As needed, the Borough will seek land owner permission for symbolic fencing and other activities to protect and manage listed species, when and where listed species occur on privately owned portions of the beach.
- The Borough will regulate permanent and temporary private structures and storage of private property on the beach (e.g., catamarans, volleyball nets, shelters) as needed to protect listed species or their habitat.
- Within the North and South Beach Zones, the Borough will not designate any new recreational areas (e.g., supervised beaches) or take any actions to promote increased recreational use without written concurrence from the ENSP and the USFWS that such designation or action would not adversely affect listed species or their habitats.
- The Borough will work with the ENSP and the USFWS to regulate existing and new recreational activities as needed to protect listed species.
- The Borough will prohibit and discourage kite flying within 200 meters of posted nesting areas between March 15 and August 31 through ordinance, signs, and education.
- In the Central Beach Zone (Recreational Zone), the Borough may conduct, permit, or sponsor any organized recreational activities or events (e.g. tournaments, races, games, musical events) at any time with no restrictions unless the Borough has been notified that listed species are present. If listed species are present, the Borough will adopt restrictions

such as timing, fencing, or alternate locations as recommended by the ENSP and/or the USFWS.

- In the North and South Beach Zones, the Borough will schedule organized events only between September 1 and March 14, unless the ENSP and the USFWS have indicated in writing that the event will not affect listed species (*e.g.*, nesting activity or the growing season has concluded for the year, or listed species are absent from the event area). For events scheduled in the North or South Beach Zones between September 1 and November 30, the Borough will implement any the USFWS fencing recommendations to protect seabeach amaranth.
- The Borough will continue to prohibit use of recreational vehicles on Monmouth Beach beaches.
- The Borough Police Department (4 p.m. – 12 a.m. shift) intermittently patrols the beach with a vehicle in front of the bathing pavilion and the beachfront of the Central Beach Zone (Recreational Zone) only. The Borough Police uses the seawall to observe (w/o a vehicle) the North and South Beach Zones.
 - No restrictions apply when Police are responding to an emergency as defined in this BMP.
 - No driving restrictions will apply in the Central Beach Zone unless the Borough has been notified that listed species are present. If listed species colonize the Central Beach Zone, the Borough will coordinate with the ENSP and the USFWS to develop a Central Zone Vehicle Use Policy. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone.
- The only municipal vehicle, other than Police, which the Borough operates on the beach is a small “Gator” (open vehicle) which is primary driven in the Central Zone (Recreational Zone) and is used for supervision and transport purposes for refuse collection (*e.g.*, Public Works, Beach Operations Manager).
 - The Borough will limit vehicle usage to in the Northern and Southern Zones to emergency purposes and for refuse collection. Refuse collection in the North and South Zones during the nesting season will be closely coordinated with the ENSP, especially when unfledged plover chicks are present. Refer to the Refuse Section of the BMP for further details.
 - In the Central Zone, no driving restrictions will apply unless the Borough has been notified that listed species are present. If listed species colonize the beach the Borough will include non-Police municipal vehicles in the Use Policy to be developed with the ENSP and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone.
- The Borough of Monmouth Beach will inform, in writing, all appropriate Borough Departments (*e.g.* Police, Public Works, Borough Clerk, Beach Operations Manager) and any contractors of the need to avoid vehicle travel in the North and South Beach Zones

from March 15 through August 31 except in bona fide emergency or SOE situations (except as indicated above for refuse collection).

ENSP Actions

- With Borough assistance if needed, the ENSP will be responsible for pre-season fencing, and will continue to post signs for all nesting areas. The ENSP will conduct pre-season fencing with symbolic fencing in areas of suitable nesting habitat as necessary and appropriate (in any Beach Zone) in late March or early April. The ENSP will coordinate annually with the Borough regarding the extent of areas that will be pre-season fenced.
- The ENSP will post all active nesting areas (in any Beach Zone) with appropriate signs and symbolic fencing, including enlarging or adjusting pre-season fencing based on observed nesting activity. Within the limits of available funding, the ENSP or its agents (*e.g.*, Monmouth University interns) will also fence and post limited areas identified by the USFWS where seabeach amaranth or other listed plants are at risk of being damaged (primarily in vicinity of beach nesting birds).
- The ENSP will remove fencing within 10 days of the end of any nesting activity, unless fencing is needed longer to protect seabeach amaranth. The ENSP or its agents, and the USFWS, will cooperate to remove seabeach amaranth fencing in a timely manner (see USFWS Actions, below). All fencing will be removed promptly when it no longer provides protection to listed species.
- The ENSP will inform the Monmouth Beach Borough Clerk, Chief of Police, Director of Public Works, and Beach Operations Manager within 2 working days of any areas that have been fenced.
- The ENSP will provide a timely response to Borough notification of planned events, and will provide recommendations to protect listed species.
- The ENSP will provide prompt updates regarding locations of unfledged piping plover broods.

USFWS Actions

- Subject to Corps or other funding, the USFWS will conduct limited early-season surveys to identify areas where seabeach amaranth or other listed plants are at risk of being damaged or destroyed, in order to make fencing recommendations.
- The USFWS will make recommendations to the ENSP or its agents or, after August 31, to the Borough, regarding the extent and duration of symbolic fencing needed to protect seabeach amaranth. Recommended fencing will be limited to areas where plants are at clear risk of being damaged or destroyed by human activity.
- The USFWS will generally recommend that the ENSP or its agents remove amaranth fencing once all plants are gone, or by August 31, whichever comes first. In the unlikely event that plants remaining on the beach past August 31 are at continued risk of being

damaged or destroyed by human activities, the USFWS will recommend that the Borough erect and maintain symbolic fence in limited areas as needed to protect these plants (*e.g.*, a large population of plants near a beach access structure, a Borough-sponsored clean-up or event in an area of species occurrence). The USFWS will recommend that the Borough remove the fencing material promptly once all plants are gone for the season, or the threat is abated (*e.g.*, the event is over).

- Subject to Corps or other funding, the USFWS will assist the Borough with any fencing needed after August 31 to protect seabeach amaranth.
- The USFWS will provide seabeach amaranth signs to post on symbolic fencing.
- The USFWS will continue work on Seabeach Amaranth Fencing Guidelines, and will provide these to the Borough and the ENSP if and when approved.
- If justified by the State-wide species distribution, the USFWS will investigate creating a Seabeach Amaranth Steward position with seasonal field duties. The Steward would oversee the fencing and protection of seabeach amaranth during the growing season, and the implementation of beach management plans with regard to listed plants. At this time, it is unclear if the Steward would be employed by a Federal or State agency or a private organization, and potential funding sources have not been secured. The USFWS will ensure coordination with the Borough if and when a Steward position is created.
- The USFWS will provide a timely response to Borough notification of planned events, and will provide recommendations to protect listed species.

D. FIREWORKS

Background

Listed species in the vicinity of a fireworks launch site can be directly harmed (eggs or chicks injured or destroyed, plants crushed) by explosions, debris, equipment, or launch personnel.

Listed species within a fireworks viewing area, which may be distant from the launch site, may be directly harmed by spectators, illegal pyrotechnics, and off-road vehicle patrols by public safety personnel. In addition, listed birds are indirectly affected by fireworks. Normal breeding, feeding, and sheltering activities can be disrupted by noise and activity at both launch and viewing areas, and increased trash in viewing areas attracts predators. Many of these impacts are worsened because fireworks events are conducted at night, limiting visibility of plants, eggs, chicks, and symbolic fencing.

Fireworks are not conducted in the Borough during the nesting season, March 15 – August 31. If fireworks are conducted in the future during the nesting season, fireworks will be managed consistent with the USFWS's Fireworks Guidelines. Because the City of Long Branch and the Borough of Sea Bright sponsor July 4th fireworks, the ENSP and the Borough have provided law enforcement and other personnel at the nesting areas to manage these crowds as needed.

In recent years during the month of September the fireworks viewing area in Monmouth Beach has been in the South beach zone nearest to Long Branch, with off-shore launching. Moderate numbers of spectators have viewed these fireworks events from secondary viewing areas in the North and South Beach Zones. The Borough will manage fireworks consist with the USFWS's Fireworks Guidelines if seabeach amaranth has been identified.

If fireworks occur in the Borough during the nesting or growing season, the following provisions will apply:

Borough Actions

- Monmouth Beach Borough will continue to inform the ENSP and the USFWS, in writing, of any planned fireworks events and the location proposed at least 30 days in advance.
- The Borough will continue to coordinate with the ENSP and the USFWS to arrange for a seabeach amaranth survey and fencing within the fireworks primary viewing area in the week preceding the event.
- To protect listed species in the North and South Beach Zones, the Borough will take the following protective measures:
 - Keep the launch and primary viewing area at or near the South beach zone nearest to Long Branch, as long as nesting areas remain limited to the North and South Beach Zones. There is an alternate section of beach, as well as an area of the Borough's Griffin Street Park, that is available for the launching and viewing of fireworks in the event that relocation becomes necessary.
 - Provide adequate law enforcement and other personnel to the North and South Beach Zones during events to enforce listed species protections, including prohibiting entry in fenced areas and use of illegal personal fireworks. The Borough will coordinate with the ENSP to determine the number of required enforcement personnel.
 - Prohibit driving of municipal vehicles in the vicinity of nesting areas during these nighttime events, unless responding to an emergency. Law enforcement patrol vehicles any other essential municipal vehicles will remain on the street behind the dunes, from which personnel can access the beach front on foot.
 - Ensure that monitors and enforcement personnel receive accurate, current information about the locations of listed species so they can minimize any disruptions from their own activities.
 - Prohibit all pets except service animals on the beach (especially near nesting areas) during fireworks events, and ensure compliance with this prohibition. Service animals near active nesting areas will be required to stay on a leash and will not be permitted in fenced areas.

- Remove any trash or litter from the vicinity of nesting areas immediately following the event, except any trash located within fenced areas, which will be left until daylight and then removed by or under the supervision of the ENSP monitors. Further, any vehicles needed to remove trash will be operated during daylight hours, under supervision of a ENSP monitor, and consistent with the Recreational Guidelines.
- If nesting becomes established within the Central Beach Zone, the Borough will continue the above protective measures in the North and South Beach Zones and will take the following additional actions:
 - Relocate the primary viewing area and/or the launch site to minimize disturbance to nesting birds to the extent possible. In no case will a launch area be closer than 0.75 mile to a nesting area unless the ENSP and the USFWS concur in writing that the proposed launch site is not likely to adversely affect listed birds. There is an alternate section of beach, as well as an area of the Borough's Griffin Street Park, that is available for the launching and viewing of fireworks in the event that relocation becomes necessary.
 - Extend to nesting areas in the Central Beach Zone all the protective measures listed above for the North and South Beach Zones, and work with the ENSP to implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing (100-foot instead of 50-foot buffers), and control of beach access and parking lots.

ENSP Actions

- The ENSP will provide a timely response to any request from the Borough to review specific fireworks plans and will provide recommendations to protect listed species.
- To protect listed species in the North and South Beach Zones, the ENSP will take the following protective measures:
 - Provide monitors and other personnel to the North and South Beach Zones during fireworks events to assist the Borough in enforcement of listed species protections, as deemed necessary.
 - Provide a monitor the following day as needed to oversee trash removal from fenced areas, and any trash removal requiring a vehicle.
- If nesting becomes established within the Central Beach Zone, the ENSP will continue the above protective measures in the North and South Beach Zones, and will take the following additional actions:
 - Review proposed relocated primary viewing areas and/or launch sites to determine if fireworks events are likely to adversely affect listed birds.
 - Extend to nesting areas in the Central Beach Zone all the protective measures listed above for the North and South Beach Zones, and will also work with the Borough to

implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing, and control of beach access and parking lots.

USFWS Actions

- The USFWS will provide a timely response to any request from the Borough to review specific fireworks plans and will provide recommendations to avoid impacts to listed species.
- The USFWS will continue to conduct in a timely manner consultation with the U.S. Coast Guard regarding authorization of Borough fireworks events pursuant to Section 7 of the ESA.
- Subject to continued availability of Corps funding, the USFWS will survey the primary viewing area within the South Beach Zone within the week preceding the event and will erect symbolic fencing around seabeach amaranth or other listed plants to provide a minimum 3-meter buffer zone around plants.

E. BEACH MANAGEMENT AND MAINTENANCE

Beach maintenance includes activities that Monmouth Beach undertakes to physically maintain the Borough's beaches and dunes, including mechanical beach raking, refuse and large debris removal, dune maintenance, beach nourishment, sand scraping, and oversight of beach access structures. These activities can impact habitat quality, disturb nesting birds, and destroy nests, chicks, and plants.

1. Beach Raking

Background

Beach rakes can inadvertently destroy unprotected nests, kill chicks, and remove plants. Beach raking can also diminish the suitability of nesting habitat by removing shell fragments and sparse vegetation. Habitat quality is also diminished by removal of natural wrack, an important foraging area for piping plovers and a key growing zone for seabeach amaranth. Beach raking is regulated by the New Jersey Coastal Zone Management Rules. The Borough will prohibit raking the North and South Beach Zones from March 15 to November 30.

Borough Actions

- No raking restrictions will apply in the Central Beach Zone unless the Borough has been notified that listed species are present, except as otherwise regulated or prohibited by the New Jersey Coastal Zone Management Rules. If listed species colonize the Central Beach Zone, the Borough will include raking in the Central Zone Vehicle Use Policy to be developed with the ENSP and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone. The Borough's beach rake access point is located at the entrance to the Bathing Pavilion's beach, in the

Central Beach Zone, therefore the beach rake does not travel through the North or South (Protected) Zones. The Bathing Pavilion Manager closely monitors this activity.

- The Borough will not rake the North or South Beach Zones between March 15 and November 30, except during a SOE (*i.e.*, potentially harmful debris must be removed from the beach to protect public health and safety).
- The Borough will notify the ENSP and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Raking in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the ENSP and the USFWS will not object to SOE Raking of the North and/or South Beach Zones during the restricted season (March 15 to November 30) to remove medical waste, hazardous trash, or other unusual debris; SOE Raking may proceed once any required authorizations are obtained from the DLUR.

ENSP and USFWS Actions

- The ENSP will monitor nesting activity and regularly inform the Borough of Monmouth Beach through the Borough Clerk's office, Police, Beach and Public Works Departments of nest and brood locations so that changes in raking procedures effected by nesting status can be implemented on a timely basis.
- The ENSP and the USFWS will promptly review requests from the Borough for SOE Raking in the North or South Beach Zones, and will make recommendations to protect listed species.
- The ENSP and/or the USFWS will provide an on-site monitor during SOE Raking, if determined that it is needed.
- The ENSP and the USFWS will recommend to the DLUR that normal raking prohibitions in the North and South Beach Zones be waived to permit SOE Raking and other provisions in the BMP that will be carried out with the protective measures listed in Table 1.
- See also the section on education and outreach regarding presentations to Borough employees.

Table 1. Seasonal Protections for Listed Species When Motorized Vehicles or Equipment are Required to Respond to a State of Emergency

	Protections for Listed Birds	Protections for Listed Plants	Protections for All Listed Species
January			
February			
March 1 – March 14			
March 15 – April	<ul style="list-style-type: none"> ▪ SOE response will be supervised by the ENSP monitors; ▪ vehicle use will take place during daylight hours; ▪ vehicles will not exceed 5 miles per hour when and where unfledged plover chicks are present; ▪ vehicles will not enter fenced areas; and ▪ vehicles will temporarily halt or change route as requested by the ENSP monitors to avoid harassment of listed birds. 	<ul style="list-style-type: none"> ▪ vehicles will avoid crushing or removing seabeach amaranth and State-listed plants. 	<ul style="list-style-type: none"> ▪ vehicles will minimize removal of wrack material; and ▪ SOE response will proceed in accordance with any other recommendations of the ENSP or the USFWS to protect listed species.
May			
June			
July			
August			
September			
October			
November			
December			

2. Large Debris Removal

Background

Large debris washes up on Borough beaches and must be removed periodically. An annual clean-up is conducted through the NJDEP Clean Shores Program. Additional clean-ups are sometimes carried out by the Borough. Removal of large debris requires motorized vehicles and equipment that can impact listed species.

Borough Actions

- No restrictions on clean-ups will apply in the Central Beach Zone unless the Borough has been notified that listed species are present. If listed species colonize the Central Beach Zone, the Borough will include clean-ups in the Central Zone Vehicle Use Policy to be developed with the ENSP and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone.
- The Borough will ensure that the Clean Shores Program schedules the annual NJDEP-sponsored clean-up in the North and South Beach Zones between September 1 and March 14.
- The Borough will not conduct, sponsor, or authorize routine clean-ups of the North or South Beach Protected Zones using motor vehicles between March 15 and August 31.
- Vehicles engaged in routine, Borough-sponsored clean-ups of the North Beach Zone between September 1 and November 30 will remain at or below the high water line to protect listed plants; the Borough will notify the ENSP and the USFWS at least 10 days prior to such a clean-up.
- The Borough will notify the ENSP and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any Beach Zone, the Borough will implement the measures listed in Table 1 when conducting SOE Clean-ups in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the ENSP and the USFWS will not object to SOE Clean-ups to remove hazardous trash or other unusual debris to protect public health and safety; SOE Clean-ups may proceed once any required authorizations are obtained from the DLUR.

ENSP and USFWS Actions

- The ENSP and the USFWS will provide timely review of notifications of Borough-sponsored clean-ups (both routine and SOE), and will provide recommendations to protect listed species.
- The ENSP and/or the USFWS will provide a monitor to oversee SOE Clean-ups in the North and/or South Beach Zones between March 15 and August 31.

3. Refuse Containers

Background

Regular servicing of trash cans and recycling containers increases vehicle traffic on the beach with inherent risks to listed species. However, minimizing trash on the beach benefits listed birds by limiting food scraps that attract predators.

Containers are placed along the Monmouth Beach from north to south. Trash from near the wrack line is also collected. Trash and recyclables are collected by hand and loaded onto a small vehicle (Gator) and then the refuse is loaded onto a vehicle (pick-up truck) that is not on the beach but the street (on Ocean Avenue) on the west side of the seawall. The refuse is collected approximately three times per week, more often as is necessary.

Borough Actions

- The Borough will continue existing trash collection practices within the Central Beach Zone unless notified that listed species are present. If listed species colonize the Central Beach Zone, the Borough will include refuse removal in the Central Zone Vehicle Use Policy to be developed with the ENSP and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone.
- In the North and South Beach Zones, the Borough will follow the essential vehicle provisions of the Recreational Guidelines for servicing refuse containers. Vehicles will not enter areas fenced for the protection of listed species. The Borough will make all reasonable efforts to limit the number of refuse collection trips during the nesting season while still allowing for adequate removal of trash in the North and South Beach Zones. In addition, trash collection vehicles traveling through nesting areas especially when and where unfledged piping plover chicks are present will:
 - Travel only during daylight hours.
 - Be guided by a qualified monitor who has first determined the location of all chicks.
 - Will not exceed a speed of 5 miles per hour.
 - Will be on an ATV or other open vehicle.
 - Vehicle operators will maintain a log of the date, time, vehicle number, and operator of each trip through chick habitat areas. The Borough will provide the logs to the ENSP and the USFWS on a mutually agreeable schedule.
- Refuse cans have standard locking lids but they are not specifically predator resistant. The Borough has not experienced a problem with predators at this time and the Public Works Manager monitors the refuse collection program closely. If predator problems are identified in nesting areas the Borough will obtain predator resistant lids.

ENSP Actions

- The ENSP will identify areas occupied by unfledged chicks in its regular faxes and/or personal communications to the Borough (see Section G), and will ensure close coordination occurs between operators of the trash collection vehicle and the ENSP field monitors regarding the locations of unfledged chicks.
- The ENSP will provide annual training to the Borough's public works staff to enable any personnel regularly involved with refuse collection to serve as the qualified monitor to escort the trash collection vehicle through areas occupied by unfledged chicks.

USFWS Actions

- The USFWS will provide the Borough with a form that vehicle operators may use to satisfy the requirement (contained in the Recreational Guidelines) to maintain a log of essential vehicle trips through piping plover habitat when unfledged chicks are present.

4. Dune Management and Invasive Plant Species Control

Background

Steep, stabilized dunes do not provide suitable habitat for the beach-dependent listed species included in this BMP. The dune management goal in the North and South Beach Zones is the development of a more natural dune system, featuring an irregular face, occasional breaches, and a low-lying sparsely vegetated foredune. Limiting the width of the dune zone is also important to ensure sufficient low, unstabilized, sparsely vegetated back beach habitat, which is essential to listed species. A more natural dune system can also provide habitat for diverse native vegetation and wildlife. Dune creation and maintenance are regulated by the New Jersey Coastal Zone Management Rules (Section 7:7E-3A.4). Invasive plant species (*e.g.* Asiatic sand sedge [*Carex kobomugi*]), either exotic or native, can degrade or eliminate native habitat for listed species.

Borough Actions

- The Borough will adopt recommendations of the ENSP and the USFWS to manage dunes and control invasive plant species in the North and South Beach Zones in ways that enhance suitability of habitat for listed species, and dunes that provide adequate storm protection. Dunes will be managed to promote a diverse assemblage of native vegetation and in accordance with N.J.A.C. 7:7E-3A.4.
- The Borough will provide plans for review by the ENSP and the USFWS at least 30 days before carrying out routine dune management or invasive plant species control activities at any time of year in the North or South Beach Zones, or in the vicinity of any nesting area or seabeach amaranth occurrence that may be documented in the Central Beach Zone. The Borough will incorporate any recommendations of the ENSP or the USFWS to protect listed species and their habitats.

- For routine dune management or invasive plant species control in the vicinity of a nesting area in any Beach Zone, the Borough will schedule work between September 1 and March 14. Work in the vicinity of a seabeach amaranth occurrence will be carried out between December 1 and May 14. Both seasonal restrictions will apply where seabeach amaranth coincides with listed birds.
- The Borough will coordinate any SOE Post-storm Beach or Dune Restoration with the ENSP and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the ENSP and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).
- In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the ENSP and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosion or storm event(s) that caused the SOE.

ENSP and USFWS Actions

- The ENSP and the USFWS will provide technical assistance to the Borough to develop dune management strategies that enhance suitability of habitat for listed species while meeting storm protection needs. The ENSP and USFWS will provide technical assistance to the Borough for controlling invasive plant species to enhance suitability of habitat for listed species. The ENSP and the USFWS recommendations will promote a diverse assemblage of native dune vegetation, and will be consistent with N.J.A.C. 7:7E-3A.4.
- The ENSP and the USFWS will provide a timely response to any request from the Borough to review specific routine dune management activities, and will provide recommendations to protect listed species and their habitats.
- The ENSP and the USFWS will provide timely recommendations upon Borough notification of SOE Post-storm Beach or Dune Restoration activities.
- The ENSP and the USFWS will provide timely recommendations upon Borough notification of invasive plant species control activities the ENSP and/or the USFWS will provide a monitor to oversee SOE Beach or Dune Restoration activities, as necessary.

5. Beach Nourishment

Background

The Corps is currently 14 years into the construction phase of a 50-year beach nourishment program that includes all of Monmouth County south of Sandy Hook. Initial nourishment of Monmouth Beach beaches under the Corps program took place in 1995. Routine renourishments are scheduled approximately every six years. The Corps completed scheduled renourishments of Monmouth Beach in 2002 and 2011. A post-Hurricane Sandy coastal restoration renourishment was completed by the Corps in September 2013.

Pursuant to Section 7 of the ESA, the Corps and the USFWS have completed formal consultation regarding the Corps' nourishment program. The USFWS issued a Programmatic Biological Opinion dated September 2002 regarding effects of the Corps' program on federally listed species. The Programmatic Biological Opinion includes numerous Conservation Measures that the Corps has agreed to implement to protect listed species, as well as binding Terms and Conditions to minimize incidental take of piping plovers. Under the provisions of the Programmatic Opinion, the Corps and the USFWS will conduct streamlined consultation prior to each scheduled renourishment.

In the future, the Borough and/or the NJDEP may decide to sponsor beach nourishment in Monmouth Beach to supplement the Corps' program. In addition, the Borough and/or the NJDEP may conduct beach nourishment as part of an SOE Post-Storm Beach or Dune Restoration. Whether routine or SOE, any beach nourishment outside of the Corps program would require Federal and State permits from the Corps and the DLUR, respectively.

In many areas of the Atlantic Coast, beach nourishment adversely affects listed species by stabilizing the naturally dynamic beach ecosystem. The listed species addressed in this BMP are adapted to dynamic conditions and thrive in areas of recent disturbance, such as newly formed inlets or overwash areas. Along with hard structures (*e.g.*, groins, jetties, sea walls), beach nourishment can contribute to a stabilized beach strand, which typically provides suboptimal habitat for listed species. However, in some areas, hard stabilization structures are so prevalent that, without a nourishment program, natural erosional processes would eliminate essentially all beach habitat; this is the case in Monmouth Beach Borough. The ENSP and the USFWS recognize that the Corps' nourishment program created and maintains the beach habitat for listed species within the Borough, and that the beach nourishment contributes minimal further stabilization to the Borough's already highly hardened coastline.

Borough Actions

- The Borough will work with the USFWS and the Corps to implement the provisions of the 2002 Programmatic Biological Opinion, and of each streamlined consultation, during each renourishment of Monmouth Beach beaches under the Corps' nourishment program. Key provisions of the Programmatic Biological Opinion include fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants; and a seasonal restriction (March 15 to fledging of the last chick) on construction within 1,000 meters of piping plover nesting areas, as defined in this BMP.

- The Borough will work with the USFWS and the Corps to ensure that any routine nourishment activities sponsored by the NJDEP and/or the Borough (requiring Federal permits) include Conservation Measures at least as protective as the provisions of the Programmatic Biological Opinion that governs implementation of the Corps' beach nourishment program. Protection would be achieved mainly through seasonal restrictions on construction within 1,000 meters of plover nesting areas, and fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants.
- SOE Beach Nourishment may be necessary when conditions pose a clear danger to human life or health (*e.g.*, ocean front beach erosion has occurred that makes public access points onto the beach dangerous or impossible to use) or pose a clear danger of damage to public or private structures lying landward of the ocean-front seawall or primary dune line, such as private homes, public buildings, streets, water lines and sewer lines. Placement of clean fill material is among the activities listed at N.J.A.C. 7.7E-3A.3(b); therefore, SOE Beach Nourishment qualifies as "SOE Post-storm Beach or Dune Restoration" as defined in this BMP.
- The Borough will coordinate any SOE Post-storm Beach or Dune Restoration (including SOE Beach Nourishment) with the ENSP and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the ENSP and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).
- In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the ENSP and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR and the Corps. The parties anticipate that SOE Restoration activities (including SOE Beach Nourishment) will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

ENSP Actions

- The ENSP will provide current information on the status and locations of listed birds before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Borough) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.
- In the course of planning for beach nourishment projects, the ENSP will provide:
 - (a) current and historical nesting data and locations, and
 - (b) recommendations for habitat enhancements that could be incorporated into the project.

- The ENSP will provide a timely response to any request from the Borough to review specific beach nourishment plans.
- The ENSP will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE Beach Nourishment.

USFWS Actions

- The USFWS will provide updated information of the locations of seabeach amaranth before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Borough) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.
- In the course of planning for beach nourishment projects, the USFWS will provide: (a) current and historical locations of seabeach amaranth, and (b) recommendations for habitat enhancements that could be incorporated into the project.
- The USFWS will work with the Corps to complete promptly streamlined consultation for each renourishment of Monmouth Beach beaches under the Corps' program.
- The USFWS will work with the Corps, the applicant, and the Borough to complete promptly consultation regarding Corps permits to authorize routine or SOE beach nourishment sponsored by the NJDEP and/or the Borough.
- Regardless of the project sponsor, the USFWS will provide the Borough with copies of relevant documents resulting from the consultation process regarding beach nourishment, including key sections of Biological Opinions.
- The USFWS will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE Beach Nourishment.

6. Sand Scraping

Background

Use of motorized equipment to conduct sand scraping (mechanical redistribution of sand; also called sand transfers or sand mining) can directly harm listed species by crushing eggs, chicks, plants, or seeds; can harass nesting birds through disturbance; and can adversely impact habitats for listed species by creating ruts and removing shells, wrack, and natural debris. Sand scraping is regulated by the New Jersey Coastal Zone Management Rules. The Borough will prohibit sand scraping the North and South Beach Zones year round.

Borough Actions

- No restrictions on sand scraping will apply in the Central Beach Zone unless the Borough has been notified that listed species are present, except as otherwise regulated or prohibited by the New Jersey Coastal Zone Management Rules. If listed species colonize the Central Beach Zone, the Borough will include sand scraping in the Central Zone

Vehicle Use Policy to be developed with the ENSP and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Central Zone.

- The Borough will not conduct sand scraping in the North or South Beach Zones at any time of the year except as a necessary part of SOE Post-storm Beach or Dune Restoration.
- Mechanical redistribution of sand is among the activities listed at N.J.A.C. 7:7E-3A.3(b); therefore, sand scraping under SOE conditions qualifies as “SOE Post-storm Beach or Dune Restoration” as defined in this BMP.
- The Borough will coordinate any SOE Post-storm Beach or Dune Restoration with the ENSP and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the ENSP and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).
- In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the ENSP and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR and the Corps. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

7. Beach Access Structures

Background

Public access to New Jersey’s beaches is a central goal of the NJDEP’s Coastal Management Program, as reflected in the State Coastal Zone Management Rules. Public access is also a key requirement of Federal and State rules governing beach nourishment carried out with public funds. However, the growing number of beach access structures over the seawall in the North Beach Zone brings more recreational users into potential conflict with listed species. Such structures can also lead to unauthorized impacts to dunes, as recreational beach users create new, unauthorized walkways through the dunes; these gaps in the dune line fragment nesting and growing areas.

Borough Actions

- The Borough will work with the ENSP and the USFWS to develop written materials regarding protections for listed species and dunes, and will provide these materials to every individual seeking Borough authorization to build a new private beach access structure. The Borough will also sponsor a mailing of these materials to owners of

existing private beach access structures. The materials will indicate that, except in designated locations, crossing over dunes is prohibited, and that certain beach entry points (dune crossings from the trail to the beach) may be closed during the nesting season and beach entry will be re-routed to protect listed species. The Borough will provide the materials for ENSP and USFWS review before initiating distribution. This effort to educate the owners of private beach access structures will help Monmouth Beach residents avoid inadvertent violations of Borough and State dune rules, and avoid inadvertent take of federally listed species or migratory birds, which are prohibited under the ESA and MBTA, respectively.

- The Borough will work with the ENSP and the USFWS to locate, design, and construct any proposed new public access structures to minimize adverse impacts to listed species.
- The Borough will work with the ENSP and the USFWS to place appropriate signs regarding protections for listed species and dunes at or near public access points (see the section on education and outreach).

ENSP and USFWS Actions

- The ENSP and the USFWS will provide timely technical assistance to the Borough in the development of materials developed to be distributed to individuals proposing new private beach access structures, and owners of existing structures.
- The ENSP and the USFWS will provide recommendations regarding any proposed new (or relocated) public beach access structure, if it determined such changes are necessary.
- The ENSP and the USFWS will provide appropriate signs to post at or near public beach access points (see the section on education and outreach).

F. EDUCATION AND OUTREACH

Background

This component of the BMP encompasses all of the management issues discussed above for the purposes of reducing predation, human disturbance, and the detrimental impacts of beach maintenance. Education and outreach include on-site and off-site distribution of educational materials, educational displays, lectures, beach walks, interpretive signs, and other elements that provide information on the biology of listed species, the impact of various human activities and predators, and recommended actions to help protect and restore populations of listed species.

Borough Actions

- The Borough will work with the ENSP and the USFWS to post appropriate signs at beach entry points and on the beach regarding: (a) protections for listed species and dunes; (b) refuse policies; (c) the Borough's pet ordinance; and (d) activities prohibited or discouraged on the beach.

- Through its Monmouth Beach newsletter and/or other publications, the Borough will inform residents, vacation homeowners, and renters about: (a) protections for listed species and dunes; (b) refuse policies; (c) the Borough's pet ordinance; and (d) activities prohibited or discouraged on the beach. The Borough will also publish periodic updates on the nesting success, population status, species biology, and management activities for listed species (information provided by the agencies).
- Through its Monmouth Beach newsletter and/or other publications, the Borough will inform residents, vacation homeowners, and renters about the importance of keeping cats indoors. The information will discourage cat owners from allowing their pets to roam freely outdoors, and from abandoning pet cats. The Monmouth Beach newsletter articles will also discourage feeding feral cats.
- The Borough will post signs within the Borough to discourage feeding of wildlife, with the exception of backyard bird feeders. The Borough has an ordinance in place which prohibits the feeding of wildlife (Borough Ordinance no. O-15-06).
- To promote compliance with the aforementioned prohibition, the Borough will discourage kite-flying near nesting areas through signs and educational materials.

ENSP and USFWS Actions

- The ENSP and the USFWS will assist the Borough in developing educational outreach materials by supplying existing materials and necessary information, and providing technical review.
- The ENSP and the USFWS will provide information for the Monmouth Beach newsletter articles and/or other publications. Upon request of the Borough, the agencies will author articles within limits of available staff time.
- The ENSP will provide copies of the brochure, "CATS Indoors" to the Borough of Monmouth Beach for general distribution.
- The USFWS will provide copies of the seabeach amaranth fact sheet developed by the ONLM (as needed), and the USFWS's Beach Management Planning and Piping Plover Factsheet upon request and as available. ENSP will provide brochures on beach-nesting birds upon request and as available.
- The ENSP and the USFWS will provide interpretive signs on the beach annually regarding listed species, as available. The ENSP and the USFWS will consult the Borough in locating interpretive signs.
- The ENSP will conduct beach walks to show beach nesting bird areas and nesting activity to Borough officials as requested by the Borough and scheduled at least once per season.

- Upon request of the Borough, the ENSP and/or the USFWS will conduct periodic educational talks and/or beach walks for Borough employees, contractors, residents, or visitors within limits of available staff time.

G. OTHER PROVISIONS

- The ENSP and the USFWS will regularly inform the Borough regarding changes in listed species locations, distribution, populations, habitat, and/or nesting activity that may affect any of the provisions of this BMP or that would be of general interest to the Borough.
- The ENSP will provide regular notification regarding nesting activity including but not limited to biweekly faxes or e-mails during the nesting season sent to the Borough Clerk, Chief of Police, Director of Public Works, and the Beach Operations Manager. The faxes or e-mails will provide the current location of nests and chicks, the ENSP management activities, and other important information.
- The ENSP and the USFWS will provide the Borough with a brief summary of endangered species recovery status and management, with recommendations, by the end of each calendar year.
- The ENSP and the USFWS will provide maps of species locations within the Borough, upon request.
- The ENSP and the USFWS will work with the Borough to support implementation of this plan.

APPENDIX A

U.S. Fish and Wildlife Service Guidelines for Managing Recreational Activities in Piping Plover
Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the
Endangered Species Act

GUIDELINES FOR MANAGING RECREATIONAL ACTIVITIES
IN PIPING PLOVER BREEDING HABITAT ON THE U.S. ATLANTIC COAST TO AVOID
TAKE UNDER SECTION 9 OF THE ENDANGERED SPECIES ACT

Northeast Region, U.S. Fish and Wildlife Service
April 15, 1994

The following information is provided as guidance to beach managers and property owners seeking to avoid potential violations of Section 9 of the Endangered Species Act (16 U.S.C. 1538) and its implementing regulations (50 CFR Part 17) that could occur as the result of recreational activities on beaches used by breeding piping plovers along the Atlantic Coast. These guidelines were developed by the Northeast Region, U.S. Fish and Wildlife Service (Service), with assistance from the U.S. Atlantic Coast Piping Plover Recovery Team. The guidelines are advisory, and failure to implement them does not, of itself, constitute a violation of the law. Rather, they represent the Service's best professional advice to beach managers and landowners regarding the management options that will prevent direct mortality, harm, or harassment of piping plovers and their eggs due to recreational activities.

Some land managers have endangered species protection obligations under Section 7 of the Endangered Species Act (see section I below) or under Executive Orders 11644 and 11989¹ that go beyond adherence to these guidelines. Nothing in this document should be construed as lack of endorsement of additional piping plover protection measures implemented by these land managers or those who are voluntarily undertaking stronger plover protection measures.

This document contains four sections: (I) a brief synopsis of the legal requirements that afford protection to nesting piping plovers; (II) a brief summary of the life history of piping plovers and potential threats due to recreational activities during the breeding cycle; (III) guidelines for protecting piping plovers from recreational activities on Atlantic Coast beaches; and (IV) literature cited.

¹ Executive Order 11644, Use of Off-Road Vehicles on the Public Lands and Executive Order 11989, Off-Road Vehicles on Public Lands pertain to lands under custody of the Secretaries of Agriculture, Defense, and Interior (except for Indian lands) and certain lands under the custody of the Tennessee Valley Authority.

I. LEGAL CONSIDERATIONS

Section 9 of the Endangered Species Act (ESA) prohibits any person subject to the jurisdiction of the United States from harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting listed wildlife species. It is also unlawful to attempt such acts, solicit another to commit such acts, or cause such acts to be committed. A "person" is defined in Section 3 to mean "an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States." Regulations implementing the ESA (50 CFR 17.3) further define "harm" to include significant habitat modification or degradation that results in the killing or injury of wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. "Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Penalties for violations of Section 9 are provided in Section 11 of the ESA; for threatened species, these penalties include fines of up to \$25,000, imprisonment for not more than six months, or both.

Section 10 of the ESA and related regulations provide for permits that may be granted to authorize acts prohibited under Section 9, for scientific purposes or to enhance the propagation or survival of a listed species. States that have Cooperative Agreements under Section 6 of the ESA, may provide written authorization for take that occurs in the course of implementing conservation programs. For example, State agencies have authorized certain biologists to construct predator exclosures for piping plovers. It is also legal for employees or designated agents of certain Federal or State agencies to take listed species without a permit, if the action is necessary to aid sick, injured, or orphaned animals or to salvage or dispose of a dead specimen.

Section 10 also allows permits to be issued for take that is "incidental to, and not the purpose of, carrying out an otherwise lawful activity" if the Service determines that certain conditions have been met. An applicant for an incidental take permit must prepare a conservation plan that specifies the impacts of the take, steps the applicant will take to minimize and mitigate the impacts, funding that will be available to implement these steps, alternative actions to the take that the applicant considered, and the reasons why such alternatives are not being utilized.

Section 7 of the ESA may be pertinent to beach managers and landowners in situations that have a Federal nexus. Section 7 requires Federal agencies to consult with the Service (or National Marine Fisheries Service for marine species) prior to authorizing, funding, or carrying out activities that may affect listed species. Section 7 also requires that these agencies use their authorities to further the conservation of listed species. Section 7 obligations have caused Federal land management agencies to implement piping plover protection measures that go beyond those required to avoid take, for example by conducting research on threats to piping plovers. Other examples of Federal activities that may affect piping plovers along the Atlantic Coast, thereby triggering Section 7 consultation, include permits for beach nourishment or disposal of dredged material (U.S. Army Corps of Engineers) and funding of beach restoration projects (Federal Emergency Management Authority).

Piping plovers, as well as other migratory birds such as least terns, common terns, American oystercatchers, laughing gulls, herring gulls, and great black-backed gulls, their nests, and eggs are also protected under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712). Prohibited acts include pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting such conduct. Violators may be fined up to \$5000 and/or imprisoned for up to six months.

Almost all States within the breeding range of the Atlantic Coast piping plover population list the species as State threatened or endangered (Northeast Nongame Technical Committee 1993). Various laws and regulations may protect State-listed species from take, but the Service has not ascertained the adequacy of the guidelines presented in this document to meet the requirements of any State law.

II. LIFE HISTORY AND THREATS FROM HUMAN DISTURBANCE

Piping plovers are small, sand-colored shorebirds that nest on sandy, coastal beaches from South Carolina to Newfoundland. Since 1986, the Atlantic Coast population has been protected as a threatened species under provisions of the U.S. Endangered Species Act of 1973 (U.S. Fish and Wildlife Service 1985). The U.S. portion of the population was estimated at 875 pairs in 1993 (U.S. Fish and Wildlife Service 1993). Many characteristics of piping plovers contribute to their susceptibility to take due to human beach activities.

LIFE HISTORY

Piping plovers begin returning to their Atlantic Coast nesting beaches in mid-March (Coutu et al. 1990, Cross 1990, Goldin 1990, MacIvor 1990, Hake 1993). Males establish and defend territories and court females (Cairns 1982). Eggs may be present on the beach from mid-April through late July. Clutch size is generally four eggs, and the incubation period² usually lasts for 27-28 days. Piping plovers fledge only a single brood per season, but may reneest several times if previous nests are lost. Chicks are precocial³ (Wilcox 1959, Cairns 1982). They may move hundreds of yards from the nest site during their first week of life (see Table 1, Summary of Chick Mobility Data). Chicks remain together with one or both parents until they fledge (are able to fly) at 25 to 35 days of age. Depending on date of hatching, flightless chicks may be present from mid-May until late August, although most fledge by the end of July (Patterson 1988, Goldin 1990, MacIvor 1990, Howard et al. 1993).

Piping plover nests are situated above the high tide line on coastal beaches, sand flats at the ends of sandspits and barrier islands, gently sloping foredunes, blowout areas behind primary dunes, and washover areas cut into or between dunes. They may also nest on areas where suitable dredge material has been deposited. Nest sites are shallow scraped depressions in substrates ranging from fine grained sand to mixtures of sand and pebbles, shells or cobble (Bent 1929, Burger 1987a, Cairns 1982, Patterson 1988, Flemming et al. 1990, MacIvor 1990, Strauss 1990).

² "Incubation" refers to adult birds sitting on eggs, to maintain them at a favorable temperature for embryo development.

³ "Precocial" birds are mobile and capable of foraging for themselves within several hours of hatching.

Nests are usually found in areas with little or no vegetation although, on occasion, piping plovers will nest under stands of American beachgrass (*Ammophila breviligulata*) or other vegetation (Patterson 1988, Flemming et al. 1990, MacIvor 1990). Plover nests may be very difficult to detect, especially during the 6-7 day egg-laying phase when the birds generally do not incubate (Goldin 1994).

Plover foods consist of invertebrates such as marine worms, fly larvae, beetles, crustaceans or mollusks (Bent 1929, Cairns 1977, Nicholls 1989). Feeding areas include intertidal portions of ocean beaches, washover areas, mudflats, sandflats, wrack lines⁴, and shorelines of coastal ponds, lagoons or salt marshes (Gibbs 1986, Coutu et al. 1990, Hoopes et al. 1992, Loegering 1992, Goldin 1993). Studies have shown that the relative importance of various feeding habitat types may vary by site (Gibbs 1986, Coutu et al. 1990, McConnaughey et al. 1990, Loegering 1992, Goldin 1993, Hoopes 1993) and by stage in the breeding cycle (Cross 1990). Adults and chicks on a given site may use different feeding habitats in varying proportion (Goldin et al. 1990). Feeding activities of chicks may be particularly important to their survival. Cairns (1977) found that piping plover chicks typically tripled their weight during the first two weeks post-hatching; chicks that failed to achieve at least 60% of this weight gain by day 12 were unlikely to survive. During courtship, nesting, and brood rearing, feeding territories are generally contiguous to nesting territories (Cairns 1977), although instances where brood-rearing areas are widely separated from nesting territories are not uncommon (see Table 1). Feeding activities of both adults and chicks may occur during all hours of the day and night (Burger 1993) and at all stages in the tidal cycle (Goldin 1993, Hoopes 1993).

THREATS FROM NONMOTORIZED BEACH ACTIVITIES

Sandy beaches that provide nesting habitat for piping plovers are also attractive recreational habitats for people and their pets. Nonmotorized recreational activities can be a source of both direct mortality and harassment of piping plovers. Pedestrians on beaches may crush eggs (Burger 1987b, Hill 1988, Shaffer and Laporte 1992, Cape Cod National Seashore 1993, Collazo et al. 1994). Unleashed dogs may chase plovers (McConnaughey et al. 1990), destroy nests (Hoopes et al. 1992), and kill chicks (Cairns and McLaren 1980).

⁴ Wrack is organic material including seaweed, seashells, driftwood and other materials deposited on beaches by tidal action.

Pedestrians may flush incubating plovers from nests (see Table 2, Summary of Data on Distances at Which Plovers React to Disturbance), exposing eggs to avian predators or causing excessive cooling or heating of eggs. Repeated exposure of shorebird eggs on hot days may cause overheating, killing the embryos (Bergstrom 1991). Excessive cooling may kill embryos or retard their development, delaying hatching dates (Welty 1982). Pedestrians can also displace unfledged chicks (Strauss 1990, Burger 1991, Hoopes et al. 1992, Loegering 1992, Goldin 1993). Fireworks are highly disturbing to piping plovers (Howard et al. 1993). Plovers are particularly intolerant of kites, compared with pedestrians, dogs, and vehicles; biologists believe this may be because plovers perceive kites as potential avian predators (Hoopes et al. 1992).

THREATS FROM MOTOR VEHICLES

Unrestricted use of motorized vehicles on beaches is a serious threat to piping plovers and their habitats. Vehicles can crush eggs (Wilcox 1959; Tull 1984; Burger 1987b; Patterson et al. 1991; United States of America v. Breezy Point Cooperative, Inc., U.S. District Court, Eastern District of New York, Civil Action No. CV-90-2542, 1991; Shaffer and Laporte 1992), adults, and chicks. In Massachusetts and New York, biologists documented 14 incidents in which 18 chicks and 2 adults were killed by vehicles between 1989 and 1993 (Melvin et al. 1994). Goldin (1993) compiled records of 34 chick mortalities (30 on the Atlantic Coast and 4 on the Northern Great Plains) due to vehicles. Many biologists that monitor and manage piping plovers believe that many more chicks are killed by vehicles than are found and reported (Melvin et al. 1994). Beaches used by vehicles during nesting and brood-rearing periods generally have fewer breeding plovers than available nesting and feeding habitat can support. In contrast, plover abundance and productivity has increased on beaches where vehicle restrictions during chick-rearing periods have been combined with protection of nests from predators (Goldin 1993; S. Melvin, pers. comm., 1993).

Typical behaviors of piping plover chicks increase their vulnerability to vehicles. Chicks frequently move between the upper berm or foredune and feeding habitats in the wrack line and intertidal zone. These movements place chicks in the paths of vehicles driving along the berm or through the intertidal zone. Chicks stand in, walk, and run along tire ruts, and sometimes have

difficulty crossing deep ruts or climbing out of them (Eddings et al. 1990, Strauss 1990, Howard et al. 1993). Chicks sometimes stand motionless or crouch as vehicles pass by, or do not move quickly enough to get out of the way (Tull 1984, Hoopes et al. 1992, Goldin 1993). Wire fencing placed around nests to deter predators (Rimmer and Deblinger 1990, Melvin et al. 1992) is ineffective in protecting chicks from vehicles because chicks typically leave the nest within a day after hatching and move extensively along the beach to feed (see Table 1).

Vehicles may also significantly degrade piping plover habitat or disrupt normal behavior patterns. They may harm or harass plovers by crushing wrack into the sand and making it unavailable as cover or a foraging substrate, by creating ruts that may trap or impede movements of chicks, and by preventing plovers from using habitat that is otherwise suitable (MacIvor 1990, Strauss 1990, Hoopes et al. 1992, Goldin 1993).

III. GUIDELINES FOR PROTECTING PIPING PLOVERS FROM RECREATIONAL DISTURBANCE

The Service recommends the following protection measures to prevent direct mortality or harassment of piping plovers, their eggs, and chicks.

MANAGEMENT OF NONMOTORIZED RECREATIONAL USES

On beaches where pedestrians, joggers, sun-bathers, picnickers, fishermen, boaters, horseback riders, or other recreational users are present in numbers that could harm or disturb incubating plovers, their eggs, or chicks, areas of at least 50 meter-radius around nests above the high tide line should be delineated with warning signs and symbolic fencing⁵. Only persons engaged in rare species monitoring, management, or research activities should enter posted areas. These areas should remain fenced as long as viable eggs or unfledged chicks are present. Fencing is intended to prevent accidental crushing of nests and repeated flushing of incubating adults, and to provide an area where chicks can rest and seek shelter when large numbers of people are on the beach.

⁵ "Symbolic fencing" refers to one or two strands of light-weight string, tied between posts to delineate areas where pedestrians and vehicles should not enter.

Available data indicate that a 50 meter buffer distance around nests will be adequate to prevent harassment of the majority of incubating piping plovers. However, fencing around nests should be expanded in cases where the standard 50 meter-radius is inadequate to protect incubating adults or unfledged chicks from harm or disturbance. Data from various sites distributed across the plover's Atlantic Coast range indicates that larger buffers may be needed in some locations (see Table 2). This may include situations where plovers are especially intolerant of human presence, or where a 50 meter-radius area provides insufficient escape cover or alternative foraging opportunities for plover chicks.⁶

In cases where the nest is located less than 50 meters above the high tide line, fencing should be situated at the high tide line, and a qualified biologist should monitor responses of the birds to passersby, documenting his/her observations in clearly recorded field notes. Providing that birds are not exhibiting signs of disturbance, this smaller buffer may be maintained in such cases.

On portions of beaches that receive heavy human use, areas where territorial plovers are observed should be symbolically fenced to prevent disruption of territorial displays and courtship. Since nests can be difficult to locate, especially during egg-laying, this will also prevent accidental crushing of undetected nests. If nests are discovered outside fenced areas, fencing should be extended to create a sufficient buffer to prevent disturbance to incubating adults, eggs, or unfledged chicks.

Pets should be leashed and under control of their owners at all times from April 1 to August 31 on beaches where piping plovers are present or have traditionally nested. Pets should be prohibited on these beaches from April 1 through August 31 if, based on observations and experience, pet owners fail to keep pets leashed and under control.

⁶ For example, on the basis of data from an intensive three year study that showed that plovers on Assateague Island in Maryland flush from nests at greater distances than those elsewhere (Loefering 1992), the Assateague Island National Seashore established 200 meter buffers zones around most nest sites and primary foraging areas (Assateague Island National Seashore 1993). Following a precipitous drop in numbers of nesting plover pairs in Delaware in the late 1980's, that State adopted a Piping Plover Management Plan that provided 100 yard buffers around nests on State park lands and included intertidal areas (Delaware Department of Natural Resources and Environmental Control 1990).

Kite flying should be prohibited within 200 meters of nesting or territorial adult or unfledged juvenile piping plovers between April 1 and August 31. Fireworks should be prohibited on beaches where plovers nest from April 1 until all chicks are fledged. (See the Service's February 4, 1997 [Guidelines for Managing Fireworks in the Vicinity of Piping Plovers and Seabeach Amaranth on the U.S. Atlantic Coast.](#))

MOTOR VEHICLE MANAGEMENT

The Service recommends the following minimum protection measures to prevent direct mortality or harassment of piping plovers, their eggs, and chicks on beaches where vehicles are permitted. Since restrictions to protect unfledged chicks often impede vehicle access along a barrier spit, a number of management options affecting the timing and size of vehicle closures are presented here. Some of these options are contingent on implementation of intensive plover monitoring and management plans by qualified biologists. It is recommended that landowners seek concurrence with such monitoring plans from either the Service or the State wildlife agency.

Protection of Nests

All suitable piping plover nesting habitat should be identified by a qualified biologist and delineated with posts and warning signs or symbolic fencing on or before April 1 each year. All vehicular access into or through posted nesting habitat should be prohibited. However, prior to hatching, vehicles may pass by such areas along designated vehicle corridors established along the outside edge of plover nesting habitat. Vehicles may also park outside delineated nesting habitat, if beach width and configuration and tidal conditions allow. Vehicle corridors or parking areas should be moved, constricted, or temporarily closed if territorial, courting, or nesting plovers are disturbed by passing or parked vehicles, or if disturbance is anticipated because of unusual tides or expected increases in vehicle use during weekends, holidays, or special events.

If data from several years of plover monitoring suggests that significantly more habitat is available than the local plover population can occupy, some suitable habitat may be left unposted if the following conditions are met:

1. The Service OR a State wildlife agency that is party to an agreement under Section 6 of the ESA provides written concurrence with a plan that:

A. Estimates the number of pairs likely to nest on the site based on the past monitoring and regional population trends.

AND

B. Delineates the habitat that will be posted or fenced prior to April 1 to assure a high probability that territorial plovers will select protected areas in which to court and nest. Sites where nesting or courting plovers were observed during the last three seasons as well as other habitat deemed most likely to be pioneered by plovers should be included in the posted and/or fenced area.

AND

C. Provides for monitoring of piping plovers on the beach by a qualified biologist(s). Generally, the frequency of monitoring should be not less than twice per week prior to May 1 and not less than three times per week thereafter. Monitoring should occur daily whenever moderate to large numbers of vehicles are on the beach. Monitors should document locations of territorial or courting plovers, nest locations, and observations of any reactions of incubating birds to pedestrian or vehicular disturbance.

AND

2. All unposted sites are posted immediately upon detection of territorial plovers.

Protection of Chicks

Sections of beaches where unfledged piping plover chicks are present should be temporarily closed to all vehicles not deemed essential. (See the provisions for essential vehicles below.) Areas where vehicles are prohibited should include all dune, beach, and intertidal habitat within the chicks' foraging range, to be determined by either of the following methods:

1. The vehicle free area should extend 1000 meters on each side of a line drawn through the nest site and perpendicular to the long axis of the beach. The resulting 2000 meter-wide area of protected habitat for plover chicks should extend from the ocean-side low water line to the bay-side low water line or to the farthest extent of dune habitat if no bay-side intertidal habitat exists. However, vehicles may be allowed to pass through portions of the protected area that are considered inaccessible to plover chicks because of steep topography, dense vegetation, or other naturally-occurring obstacles.

OR

2. The Service OR a State wildlife agency that is party to an agreement under Section 6 of the ESA provides written concurrence with a plan that:

A. Provides for monitoring of all broods during the chick-rearing phase of the breeding season and specifies the frequency of monitoring.

AND

B. Specifies the minimum size of vehicle-free areas to be established in the vicinity of unfledged broods based on the mobility of broods observed on the site in past years and on the frequency of monitoring. Unless substantial data from past years show that broods on a site stay very close to their nest locations, vehicle-free areas should extend at least 200 meters on each side of the nest site during the first week following hatching. The size and location of the protected area should be adjusted in response to the observed mobility of the brood, but in no case should it be reduced to less than 100 meters on each side of the brood. In some cases, highly mobile broods may require protected areas up to 1000 meters, even where they are intensively monitored. Protected areas should extend from the ocean-side low water line to the bay-side low water line or to the farthest

extent of dune habitat if no bay-side intertidal habitat exists. However, vehicles may be allowed to pass through portions of the protected area that are considered inaccessible to plover chicks because of steep topography, dense vegetation, or other naturally-occurring obstacles. In a few cases, where several years of data documents that piping plovers on a particular site feed in only certain habitat types, the Service or the State wildlife management agency may provide written concurrence that vehicles pose no danger to plovers in other specified habitats on that site.

Timing of Vehicle Restrictions in Chick Habitat

Restrictions on use of vehicles in areas where unfledged plover chicks are present should begin on or before the date that hatching begins and continue until chicks have fledged. For purposes of vehicle management, plover chicks are considered fledged at 35 days of age or when observed in sustained flight for at least 15 meters, whichever occurs first.

When piping plover nests are found before the last egg is laid, restrictions on vehicles should begin on the 26th day after the last egg is laid. This assumes an average incubation period of 27 days, and provides a 1 day margin of error.

When plover nests are found after the last egg has been laid, making it impossible to predict hatch date, restrictions on vehicles should begin on a date determined by one of the following scenarios:

1) With intensive monitoring: If the nest is monitored at least twice per day, at dawn and dusk (before 0600 hrs and after 1900 hrs) by a qualified biologist, vehicle use may continue until hatching begins. Nests should be monitored at dawn and dusk to minimize the time that hatching may go undetected if it occurs after dark. Whenever possible, nests should be monitored from a distance with spotting scope or binoculars to minimize disturbance to incubating plovers.

OR

2) Without intensive monitoring: Restrictions should begin on May 15 (the earliest probable hatch date). If the nest is discovered after May 15, then restrictions should start immediately.

If hatching occurs earlier than expected, or chicks are discovered from an unreported nest, restrictions on vehicles should begin immediately.

If ruts are present that are deep enough to restrict movements of plover chicks, then restrictions on vehicles should begin at least 5 days prior to the anticipated hatching date of plover nests. If a plover nest is found with a complete clutch, precluding estimation of hatching date, and deep ruts have been created that could reasonably be expected to impede chick movements, then restrictions on vehicles should begin immediately.

Essential Vehicles

Because it is impossible to completely eliminate the possibility that a vehicle will accidentally crush an unfledged plover chicks, use of vehicles in the vicinity of broods should be avoided whenever possible. However, the Service recognizes that life-threatening situations on the beach may require emergency vehicle response. Furthermore, some "essential vehicles" may be required to provide for safety of pedestrian recreationists, law enforcement, maintenance of public property, or access to private dwellings not otherwise accessible. On large beaches, maintaining the frequency of plover monitoring required to minimize the size and duration of vehicle closures may necessitate the use of vehicles by plover monitors.

Essential vehicles should only travel on sections of beaches where unfledged plover chicks are present if such travel is absolutely necessary and no other reasonable travel routes are available. All steps should be taken to minimize number of trips by essential vehicles through chick habitat areas. Homeowners should consider other means of access, eg. by foot, water, or shuttle services, during periods when chicks are present.

The following procedures should be followed to minimize the probability that chicks will be crushed by essential (non-emergency) vehicles:

1. Essential vehicles should travel through chick habitat areas only during daylight hours, and should be guided by a qualified monitor who has first determined the location of all unfledged plover chicks.
2. Speed of vehicles should not exceed five miles per hour.
3. Use of open 4-wheel motorized all-terrain vehicles (ATVs) or non-motorized all- terrain bicycles is recommended whenever possible for monitoring and law enforcement because of the improved visibility afforded operators.
4. A log should be maintained by the beach manager of the date, time, vehicle number and operator, and purpose of each trip through areas where unfledged chicks are present. Personnel monitoring plovers should maintain and regularly update a log of the numbers and locations of unfledged plover chicks on each beach. Drivers of essential vehicles should review the log each day to determine the most recent number and location of unfledged chicks.

Essential vehicles should avoid driving on the wrack line, and travel should be infrequent enough to avoid creating deep ruts that could impede chick movements. If essential vehicles are creating ruts that could impede chick movements, use of essential vehicles should be further reduced and, if necessary, restricted to emergency vehicles only.

SITE-SPECIFIC MANAGEMENT GUIDANCE

The guidelines provided in this document are based on an extensive review of the scientific literature and are intended to cover the vast majority of situations likely to be encountered on piping plover nesting sites along the U.S. Atlantic Coast. However, the Service recognizes that site-specific conditions may lead to anomalous situations in which departures from this guidance may be safely implemented. The Service recommends that landowners who believe such situations exist on their lands contact either the Service or the State wildlife agency and, if appropriate, arrange for an on-site review. Written documentation of agreements regarding departures from this guidance is recommended.

In some unusual circumstances, Service or State biologists may recognize situations where this guidance provides insufficient protection for piping plovers or their nests. In such a case, the Service or the State wildlife agency may provide written notice to the landowner describing additional measures recommended to prevent take of piping plovers on that site.

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Table 1. Summary of Chick Mobility Data

<u>Source</u>	<u>Location</u>	<u>Data</u>
Patterson 1988 (p.40)	Maryland and Virginia	18 of 38 broods moved to feeding areas more than 100 meters from their nests; 5 broods moved more than 600 meters (distance measured parallel to wrackline).
Cross 1989 (p.23)	Virginia	At three sites, observers relocated broods at mean distances from their nests of 153 m +/- 97m (44 observations, 14 broods), 32 m +/-7 m (8 observations, 3 broods), and 492 m +/-281 m (12 observations, 4 broods).
Coutu et al. 1990 (p.12)	North Carolina	Observations of 11 broods averaged 212 m from their nests; 3 broods moved 400-725 m from nest sites.
Strauss 1990 (p.33)	Massachusetts	10 chicks moved more than 200 m during first 5 days post-hatch while 19 chicks moved less than 200 meters during same interval.
Loegering 1992 (p.72)	Maryland	Distances broods moved from nests during first 5 days post-hatch averaged 195 m in Bay (n=10), 141 m in Interior habitat (n=36), and 131 m in Ocean habitat (n=41). By 21 days, movement in each habitat had, respectively, increased to 850 m (n=1), 464 m (n=10), (n=69). One brood moved more than 1000 m from its nest.
Melvin et al. 1994	Massachusetts and New York	In 14 incidents in which 18 chicks were killed by vehicles, chicks were run over ≤ 10 m to ≤ 900 m from their nests. In 7 of these instances, mortality occurred ≥ 200 m from the nest.

Table 2. Summary of Data on Distances at which Piping Plovers React to Disturbance

Source	Location	Data
<u>Flushing of Incubating Birds by Pedestrians</u>		
Flemming et al. 1988 (p.326)	Nova Scotia	Adults usually flushed from the nests at distances <40 m; however, great variation existed and reaction distances as great as 210 m were observed.
Cross 1990 (p.47)	Virginia	Mean flushing distances in each of two years were 47 m (n=181, range = 5 m to 300 m) and 25 m (n=214, range = 2 m to 100 m).
Loefering 1992 (p.61)	Maryland	Flushing distances averaged 78 m (n=43); range was 20 m to 174 m. Recommended use of 225 m disturbance buffers on his site.
Cross and Terwilliger 1993	Virginia	Mean flushing distance for all years on all sites (Virginia plover sites, 1986-91) was 63 m (n=201, SD=31, range = 7 m to 200 m). Differences among years were not significant, but differences among sites were.
Hoopes 1993 (p.72)	Massachusetts	Mean flushing distance for incubating plovers was 24 m (n=31).
<u>Disturbance to Non-incubating Birds</u>		
Hoopes 1993 (p.89)	Massachusetts	Mean response distance (all ages, all behaviors) was 23 m for pedestrian disturbances (range = 10 m to 60 m), 40 m for vehicles (range = 30 m to 70 m), 46 m for dogs/pets (range = 20 m to 100 m), and 85 m for kites (range = 60 m to 120 m).
Goldin 1993b (p.74)	New York	Average flushing distance for adult and juvenile plovers was 18.7 m for pedestrian disturbances (n=585), 19.5 m for joggers (n=183), and 20.4 m for vehicles (n=111). Pedestrians caused chicks to flush at an average distance of 20.7 m (n=175), joggers at 32.3 m (n=37), and vehicles at 19.3 m (n=7). Tolerance of individual birds varied; one chick moved 260 m in direct response to 20 disturbances in 1 hour.

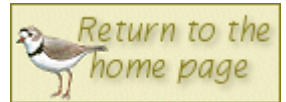
APPENDIX B

U.S. Fish and Wildlife Service Guidelines for Managing Fireworks in the Vicinity of Piping
Plovers and Seabeach Amaranth on the U.S. Atlantic Coast



U.S. Fish & Wildlife Service

Piping Plover Atlantic Coast Population



Guidelines for Managing Fireworks in the Vicinity of Piping Plovers and Seabeach Amaranth on the U.S. Atlantic Coast

February 4, 1997

The following is provided as guidance to Federal agencies, landowners, commercial fireworks companies, and fireworks event sponsors seeking to avoid adverse effects on piping plovers and seabeach amaranth. They are intended to advise Federal agencies that conduct, fund, or authorize fireworks activities regarding the measures needed to avoid adverse effects on listed species, thereby averting the need for formal consultation under Section 7 of the Endangered Species Act (ESA). These practices also constitute the U.S. Fish and Wildlife Service's (Service's) best professional advice to non-Federal entities on avoiding take of piping plovers under Section 9 of the ESA.

These guidelines supplement information about protection of piping plovers from a variety of recreational activities, provided in the Service's April 15, 1994 *[Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act](#)* [\(1\)](#).

Seabeach amaranth, a threatened plant species protected under the Endangered Species Act (ESA), occurred historically along coastal beaches from southern Massachusetts to South Carolina. At the present time it is found only on Long Island, New York; North Carolina; and South Carolina. Section 7 of the ESA requires Federal agencies to consult with the Service prior to authorizing, funding, or carrying out activities that directly or indirectly affect listed plants; this requirement is applicable to permits related to fireworks events that are issued by the U.S. Coast Guard.

Potential Impacts Related to Fireworks Displays

Direct Impacts

Fireworks are highly disturbing to piping plovers. Fireworks early in the breeding season may cause plovers conducting courtship activities to abandon their territories. Direct injury can be caused by the explosions or debris, and piping plovers and terns (which often nest adjacent to or near plovers) will often abandon their nests and broods during fireworks displays, exposing eggs and chicks to weather and predators. If a flightless chick were to become permanently separated from its parents during the confusion, mortality would be almost certain.

Several situations where fireworks caused severe adverse effects on least terns, colonial nesting birds often found in the vicinity of piping plovers, serve as indicators of the effects that pyrotechnics can exert on beach-nesting birds. An August 1993 fireworks display in New Jersey caused permanent abandonment of a least tern colony located more than 250 m away, and a 1994 New Jersey fireworks display caused temporary abandonment and displays of distress by terns within a colony located more than 3/4 mile away. Incidents in New York where piping plovers were disturbed by fireworks also caused prolonged disturbance to least terns and black skimmers nesting nearby.

Seabeach amaranth can be directly affected by launch activities if they occur in areas where the plants may be crushed or damaged by launch personnel or equipment.

Indirect Impacts

In addition to adverse effects from the noise and lights of the pyrotechnics, commercial fireworks displays often draw large crowds that may pose threats to nearby plovers. These crowds may be situated at some distance from the actual launch site, for example, across an inlet. Potential indirect impacts that may adversely affect piping plovers include: spectators walking through and/or throwing objects (including illegal pyrotechnics) into plover nesting and brood-rearing areas; additional off-road vehicle patrols by public safety personnel; increased boat landings by spectators on relatively remote stretches of beach; low-flying aircraft, including helicopter patrols and personal spectator aircraft; additional trash (which attracts predators). Signs and symbolic fences that are adequate for the purpose of alerting daytime beach users to locations of plover breeding areas are often insufficient to prevent accidental entry by fireworks spectators wandering in the dark.

Potential indirect adverse effects on seabeach amaranth include trampling or crushing of unprotected plants by pedestrian or vehicular traffic on the beach.

Measures for Avoiding and Monitoring Direct and Indirect Impacts of Fireworks Events

Direct Impacts

Fireworks displays including launch areas and debris fallout areas should be located to avoid disturbance of breeding piping plovers. In general, the Service recommends that the launch site be located a minimum of 3/4 mile from the nearest plover nesting and/or foraging area. Access routes for personnel deploying the fireworks and other public safety personnel (including fire prevention/suppression and law enforcement officers) should conform with the vehicle management recommendations contained in the *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act*. Launch sites should also be located to prevent trampling any seabeach amaranth plants.

Indirect Impacts

Event sponsors should plan and implement measures to assure that spectators will not walk through and/or throw objects into plover nesting and brood-rearing areas. Sufficient law enforcement and other personnel must also be on-site during these events to enforce plover protection measures and prevent use of illegal fireworks in the vicinity of the birds.

1. Plover habitats in the vicinity of where spectators may congregate should be intensively surveyed by qualified biologists⁽²⁾ for at least four days prior to the event to locate nests, adult plovers, chicks, and/or post-fledged juveniles. For events prior to July 1, surveyors should also search for territorial and/or courting adults that have not yet established nests or may be preparing to re-nest. In New York, potential habitat for seabeach amaranth should be surveyed to locate any seabeach amaranth plants.
2. Plover habitats should be symbolically fenced in accordance with the Service's *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act* (see discussion of *Management of Nonmotorized Recreational Uses*). Seabeach amaranth plants should be symbolically fenced to provide a minimum 3 meter buffer zone around individual plants or groups of plants.
3. Additional protection measures recommended to avoid impacts that may occur when the large crowds are drawn to the beach at night include⁽³⁾:
 - a. Close parking lots and beach access points in the vicinity of breeding plovers.
 - b. Increase the size of symbolically fenced areas around plover nesting areas to provide extra buffers

between birds and pedestrians that may be on the beach. The size of buffers should be appropriate for the size of the anticipated crowd; for large crowds, buffers should be expanded from the standard 50 meters to a total of 100 meters from established nests.

- c. Increase the visibility of fencing using reflectorized tape or by substituting snowfences, plastic orange highway construction fences, or wire mesh fences for string fencing, as string fences are very difficult to see at night. Snowfences and highway construction fences should be removed the next day if there is any chance that they will impede chick movements.
 - d. Fence and post foraging territories of unfledged chicks, as delineated by a qualified biologist, especially in areas where large crowds are anticipated and/or if the day of the event is especially hot (since heat often deters chick foraging during the daytime, increasing the birds' reliance on evening feeding).
 - e. Provide adequate numbers (consistent with anticipated numbers of spectators) of monitors and law enforcement personnel in the vicinity of plover breeding areas or seabeach amaranth locations to patrol fenced areas from the time when spectators begin congregating on the beach until the crowd disperses after the event. Assure that monitors and enforcement personnel receive accurate current information about the locations of threatened birds and plants so that they can minimize any disruptions from their own activities.
 - f. Prohibit all pets on the beach during the event and ensure compliance with this prohibition.
4. Remove any trash or litter from the beach immediately following the event. However, any trash located within fenced areas should be left until daylight and then removed by or under the supervision of plover monitors. Further, vehicles should not be used at night to remove trash within 100 meters of unfledged plover chicks.
 5. In order to gauge the effectiveness of the measures 3 and 4, the following data should be collected:
 - a. Locations and status of all adult plovers, nests, and chicks within 1/4 mile of spectator viewing areas should be determined by a qualified biologist on the day of the event and again on the following day.
 - b. Counts of human and dog tracks that intersect the perimeter of symbolically fenced areas before and after the event.
 - c. Counts of any persons actually observed inside symbolically fenced areas during the event.
 - d. Counts of any instances of illegal pyrotechnics used on the beach during the event.
 - e. Counts of trash/litter items inside symbolically fenced areas before and after the event. For very large areas or areas that have substantial amounts of trash before the event, trash counts may be conducted in sample plots.
 - f. Count of breaks in symbolic fences.
 6. Except when responding to an actual emergency situation, all law enforcement, fire department, public works, fireworks deployment, and other vehicles in the vicinity of breeding plovers should only be operated in conformance with the Service's *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act* (see discussion of Essential Vehicles).

1. Copies of the 1994 Guidelines for general recreational activities are also available, on request, from the U.S. Fish and Wildlife Service, Wier Hill Road, Sudbury, MA 01776, Attn: Anne Hecht; telephone 508-443-4325; fax 508-443-2898.

2. State wildlife agencies and private environmental groups often conduct plover monitoring activities and can be consulted for available

information about plover breeding locations. However, intensity of surveys needed to avoid adverse effects from fireworks events will often exceed those routinely conducted by these wildlife agencies/organizations. Arrangements and commitments for added surveys for these events are the responsibility of the permitting agencies and/or event sponsors. It is recommended that these arrangements be made well in advance of the potential event, due to limited availability of qualified personnel.

3. For extremely large fireworks events, additional protection measures may be needed, including: issuing air traffic advisory for all aircraft to remain >1000' above sensitive areas; issuing mariners advisory telling boaters not to land in sensitive areas; boat patrols; extensive advanced publicity advising spectators where they *should* go to watch the fireworks and about closed areas; training about protection needs of rare plants and/or animals for law enforcement personnel.



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Last updated May 26, 2000

APPENDIX C

Excerpts from the New Jersey Coastal Zone Management Rules

Appendix 5

THIS STATE AID AGREEMENT Contract #1239 made and executed this
11th day of November, Nineteen Hundred and Eighty-Nine BY AND BETWEEN
the Borough of Monmouth Beach, a municipal corporation, in the County of
Monmouth, New Jersey, hereinafter called the "Municipality", party of the
first part; and the DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF
COASTAL RESOURCES OF THE STATE OF NEW JERSEY, hereinafter called the
"Division"; party of the second part.

WITNESSETH: WHEREAS, the Water Resource Development Act of
1986, P.L. 99-662, dated November 3, 1986, authorized the construction of
the Ocean Township to Sandy Hook increment of the previously authorized
Federal Beach Erosion Control Project, Sandy Hook to Barnegat Inlet, New
Jersey; and

WHEREAS, the non-Federal share of this beach erosion project
shall consist of the amounts expended for the reconstruction of the
existing stone seawall in Monmouth Beach; and

WHEREAS, the non-Federal interest, State and local municipali-
ty, must provide public access to the seawall and beach for which such
increment of the project is authorized in accordance with all require-
ments of State law and regulations; and

WHEREAS, the Water Resource Development Act of 1988, amended
the Water Resource Development Act of 1986 to say, for the first \$40.0
million in cost towards the placement of sand beachfill in the beach
erosion control project, the non-Federal share shall be the amount
expended for the reconstruction of the existing seawall; for the cost in
excess of \$40 million, the non-Federal share shall be shared on a 65%
Federal and 35% non-Federal basis, with credit to non-Federal share for
the value of land, easements, right-of-ways and relocations; and

WHEREAS, the Municipality has agreed to cost share on a 75/25
basis, the reconstruction of the existing stone seawall, to provide
public access to the seawall and the sand beach, and to cost share with
the State the non-Federal cost of the sand beachfill; and

WHEREAS, the reconstruction of the stone seawall is authorized
and funds appropriated; Account 4890-534-861000-61, by the laws of the
State of New Jersey under Chapter 19, Laws of 1988; and

WHEREAS, the placement of sand beachfill is authorized under the laws of the State of New Jersey, N.J.S.A. 12:6a-1 et seq. and Chapter 356, P.L. 83, and the funding for the State share of the non-Federal cost is depending on future legislative action; and

WHEREAS, the Municipality has applied for funding on a 75/25 ratio matching basis for seawall repair and beach nourishment along the Atlantic Ocean shorefront in the Borough of Monmouth Beach, Monmouth County, New Jersey at a total cost of \$3,081,948 ;and

WHEREAS, the Shore Protection Program procedural rules (N.J.A.C. 7:7E-1 et seq.) require that grants and loans be conditioned upon compliance with the Department's Rules on Coastal Resources and Development (N.J.A.C. 7:7E-1 et seq.) in four policy areas: Public Access to the Waterfront (7:7E-8.11), Beaches (7:7E-3.20), Dunes (7:7E-3.21), and Erosion Hazard Areas (7:7E-3.23); and

NOW THEREFORE, the parties hereto do mutually agree as follows:

(1) The Division of Coastal Resources shall be responsible for the proper completion of seawall repair and beach nourishment in the Borough of Monmouth Beach, Monmouth County, New Jersey.

(2) The Municipality shall be responsible for paying the 25% share of the project cost, pursuant to Contract #1239, which amounts to \$770,487. ~~This payment must be received by the State of New Jersey prior to the bidding of the shore protection project.~~

(3) The Municipality shall adopt or amend Ordinances which protect beaches and dunes within six months of the date of this contract, as explained in Attachment A. The Municipality shall also amend or adopt land use ordinances to regulate, and reduce development in erosion hazard areas within six months of the date of this contract, as explained in Attachment B. These ordinances must be approved by the Division. Any further revisions or amendments to these ordinances must first be submitted to and approved by the Division of Coastal Resources. Any applications for variances from these ordinances must

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first be submitted to and approved by the Division of Coastal Resources.

(4) The Municipality shall be responsible, at a minimum, for providing public access as described in Attachment C.


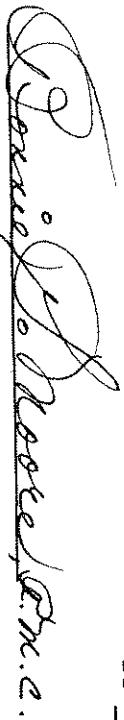
(5) The Borough of Monmouth Beach will be responsible for obtaining any and all construction, maintenance and public access easements as required by the Division's Bureau of Coastal Engineering, including but not limited to those areas listed in Attachment D, and supply copies of said easements to the Division after being recorded with the Monmouth County Clerk. Copies of the recorded easements must be received by the Division no later than November 1, 1989.

(6) The Municipality agrees that in the event that it fails to comply with the beach, dune and erosion hazard area protection undertakings set forth in Paragraph 3, the public access undertakings set forth in Paragraph 4, or the easement acquisitions set forth in Paragraph 5, that it will repay to the Division the 75% state share provided for in this contract, with simple interest accruing from the date the project was completed until the money is repaid, at a rate equal to the prime interest (rate) as published in the New York Times business section. The municipality also acknowledges that failure to adhere to Paragraphs 3, 4 and 5 and Attachments shall determine eligibility for future shore protection funds.

(7) Either party to this contract may recommend modifications to this agreement as their need becomes evident. Modifications will be made only with the written consent of the Division of Coastal Resources and the Municipality.


(8) The Division and the Municipality will provide the non-Federal share of the beachfill project cost, to the Department of the Army, 60 days prior to the award of the beachfill contract. This non-Federal cost will be shared on a 75/25 basis (state/municipal).


IN WITNESS WHEREOF, The Municipality and the Division have
hereunto set their respective names and seals on the day and year first
written.

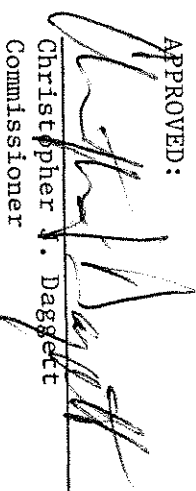
BY 
 D. J. Salom, D.N.C.

ATTEST:

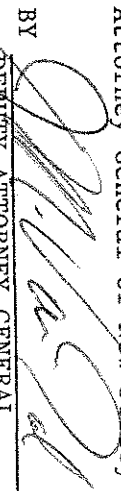
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COASTAL RESOURCES OF THE
STATE OF NEW JERSEY

BY 
John R. Weingart, Director


Bernard J. Moore
Assistant Director for Engineering
and Construction

APPROVED:

Christopher J. Daggett
Commissioner

The aforementioned agreement has been reviewed and approved as to
form.

PETER N. PERRETTI, JR.
Attorney General of New Jersey
BY 
DEPUTY ATTORNEY GENERAL

NEW JERSEY

MUNICIPAL RESOLUTION

WHEREAS, The Borough of Monmouth Beach, County of Monmouth, New Jersey, has applied for State Aid for seawall repair and beach nourishment, and the cost thereof is subject to a 75/25 ratio matching basis under State Project No. 1239;

BE IT RESOLVED, by the Borough of Monmouth Beach, County of Monmouth, State of New Jersey that the Mayor be and is authorized to execute and deliver to the Department of Environmental Protection, Division of Coastal Resources of the State of New Jersey, a contract on behalf of the Borough of Monmouth Beach for the purpose of obtaining state aid under Project No. 1239 for shore protection work as aforesaid designated and described. The Borough of Monmouth Beach also agrees to pay the 25% Municipal share (\$770,487) to the State of New Jersey, prior to the bidding of the shore protection project. The Municipality also agrees to abide by the four Coastal Policies as set forth in paragraphs 3 and 4 of the Contract as well as all other provisions of the contract.

Dated: October 10th 1989.

James J. Adams

Daniel D. Moore
D.P.M.C.

Certification by _____

I hereby certify that the foregoing is a true copy of a resolution adopted by the Council at a meeting held October 10, 1989. ,

In Testimony Whereof, I have hereunto set my hand and affirmed the seal of the Borough of this 10th day of October, 1989 Monmouth Beach

Daniel D. Moore, Jr.
Clerk

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

BE IT REMEMBERED THAT, ON THIS 13th day of December, 1989
before me a Notary Public of New Jersey personally appeared BERNARD J.
MOORE, who being by me sworn on his oath that he is the Assistant Direc-
tor for Engineering and Construction of the New Jersey State Department
of of Environmental Protection, Division of Coastal Resources, that he
well knows the seal of the said Division, that the seal affixed to the
foregoing instrument is the seal of said Division, that the seal was so
affixed and the instrument signed and delivered by John R. Weingart who
was at the date thereof, the Director of the Division of Coastal Resourc-
es of the New Jersey Department of Environmental Protection, and who in
the presence of this deponent, signed, sealed, and delivered the same as
his voluntary act and deed, and that deponent at the same time, sub-
scribed his name to said instrument as an attesting witness to the
execution thereof.



SWORN AND SUBSCRIBED
BEFORE ME AT
THE DATE AFORESAID



Notary Public of New Jersey

SUSAN K. BROWN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 16, 1990

ATTACHMENT A

1. Beaches:

Beaches are gently sloping unvegetated areas of sand or other unconsolidated material that extend landward from the mean high water line to either: (1) the vegetation line, (2) a man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas, or (3) the seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters. Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

A. Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are;

- (i) Demolition and removal of paving and structures,
- (ii) Dune creation and related sand fencing and planting of vegetation for dune stabilization,
- (iii) The reconstruction of existing amusement and fishing piers and boardwalks,
- (iv) Temporary recreation structures for public safety such as first aid and lifeguard stations,
- (v) Linear development which meets the policy on Location of Linear Development (7:7E-6.1).

2. Dunes:

A dune is a wind or wave deposited or man-made formation of vegetated or drifting wind blown sand, that lies generally parallel to, and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope.

"Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. Formations and sand immediately adjacent to beaches that are stabilized by retaining structures, and or snow fences, planted vegetation, and other measures are considered to be dune regardless of the degree of modification of the dune by wind or wave action or disturbance by development. A small mound of loss, wind blown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune".

A. Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

- (i) Demolition and removal of paving and structures,
- (ii) Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup,
- (iii) Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference which the beach and dune system,
- (iv) The planting of native vegetation to stabilize dunes,
- (v) Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation.

- (vi) Shore Protection Structures which meet the Use conditions of Section 7:7E-7.11(e), and
- (vii) Linear development which meets the DEP Policy on Location of Linear Development (7:7E-6.1).

ATTACHMENT B

1. Erosion Hazard Areas:

Erosion Hazard Areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms. Development is prohibited in erosion hazard areas, except for

1. linear development which complies with the Division's policy on location of Linear Development (N.J.A.C. 7:7E-6.1), and

2. Shore protection activities which meet the appropriate Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11).

The extent of the Erosion Hazard Area may be calculated by multiplying by fifty the projected annual erosion rate, as determined by the Division of Coastal Resources.

ATTACHMENT C

1. Public Access to the Waterfront

The municipality must provide perpendicular and linear access to the waterfront. The municipality can charge a reasonable fee for access to these areas, subject to other applicable laws and court decisions. This area must be open equally to all people and its use may not in any way be restricted to use by municipal or county residents, members of a beach club or association or any other group. Specifically, this access must be provided from the area along and/or inshore of the seawall, along the top of the seawall and onto the beach, and along the entire beachfront, except for any privately granted beaches, which must provide full access to all new beach areas resulting from the beachfill project. Upon completion of the proposed beach nourishment, the Division will be responsible for the construction of 3 sets of access stairways leading from the inshore side of the seawall, across the top of the seawall, and down to the beach. The Division will also provide signs showing these designated public access points.

Also, in accordance with the Borough of Monmouth Beach Public Access Plan, the following public access requirements must be implemented no later than January 1, 1991, 90 days prior to the date of completion of the seawall construction.

- A. All parking at the Borough owned Bathing Pavilion must be available to all members of the public.
- B. A total number of five Bathing Pavilion parking spaces must be reserved for handicapped drivers, and must remain open to the public.
- C. The Borough must provide public parking on Block 45-C, Lot 36, Block 51, Lot 18, Block 46, Lot 10, and the available portions of Block 18, Lots 8 and 9. These spaces must remain open to the public.
- D. The Borough must retain ownership of Block 18.01, Lot 7, and provide public parking on this site.
- E. The Borough must pass a Resolution which would allow limited on-street parking for one side of State Highway 36 (Ocean Avenue). This Resolution must then be submitted to DOT Region 3 design section for their review and approval. The DOT has

indicated that the Route 36 shoulders provide adequate area (12 feet wide) for on-street parking.

In addition, the Borough must submit to the Division a progress report detailing the status of these public access requirements. This progress report must be received by the Division no later than December 1, 1990, one year prior to the completion of the seawall construction.

ATTACHMENT D
MONMOUTH BEACH

PERMANENT EASEMENTS TO BE ACQUIRED

<u>BLOCK NO.</u>	<u>LOT</u>	<u>DESCRIPTION</u>
1	1	All property east of the westerly
	2,2.01	toe of the seawall
	15,15.01	" "
	3,4	" "
	5	Exempt-Borough
	5.01	All property east of the westerly
		toe of the seawall
	6,7,8	" "
	9,9.01	" "
	14	" "
10	10	" "
	11,11.01	" "
	12,13	" "
	1	All property east of the westerly
		toe of the seawall
2	2	Exempt-Borough
	2.03,2.02	All property east of the westerly
		toe of the seawall
	6	Exempt-Borough
3,4,5	3,4,5	All property east of the westerly
		toe of the seawall
	7,8	" "
9	9	Exempt-Borough
	10-18	All property east of the westerly
		toe of the seawall
22	1,2,3,	All property outshore of a line 25
		feet west of the inshore toe of the
		seawall (This line is extended to
		the end of the block in the area
		where the seawall does not exist)

48	1,12	All property extending eastward from the inshore edge of the crest of the seawall
48.01	11	"
	9	"
	10	"
50	1.01	Exempt-Borough
	3.01	"
	4.01	"
	5-13	All property eastward from a line 25 feet west of the inshore edge of the toe of the seawall
	5.01-	Exempt-Borough
	15.01	"
	14.02,	Exempt Borough
	15.02	"
	14,15	Not included in project

Appendix 6

MBCH-01610 PUBLIC PARKING CALCULATION

Beach Area	3,179,880 sf
Beach Capacity (1 person/100 sf beach area)	31,798 people
<u>Residents within 1/2 mile</u>	
Houses (4 people/dwelling)	2080
Condos(4 people/unit)	2480
	<u>4,560 people</u>

Beach capacity minus residents within walking distance 27,238 people

Assume 3 people/car

9079 required spaces

<u>Off Street Parking (Parking Lots)</u>	<u>Spaces Available</u>
Seacrest & Ocean	125
Seaview b/t Surf & Valentine	150
Borough Pavillion	150
Condo Parking	892
Total Off Street Parking	1317

<u>On-Street Parking</u>	
Valentine- South Side	60
Surf- South Side	13
Anderson- both sides	56
Johnson-both sides	63
*River Ave- both sides	89
Riverdale-both sides	181
Cottage- South side	13
Central-South side	8
Central-North side	12
Park- South side	25
Park- North side	11
Seacrest- South side	6
Beach-South side	51
Drew Ct-both sides	23
Griffin- both sides	25
Jessica - South Side	23
Margaret- one side	9
Monmouth-one side	23
On Street Total	691

Total Spaces Available	2,008
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Amount of parking required 7,072

* River Avenue between Anderson and Beach Road - May 15 thru Sept. 15 -
East Side of Roadway - No Parking on Weekends and Holidays

Appendix 7

Section ... Existing Section 30-8.27 of the Monmouth Beach Code, entitled “Signs”, is hereby amended as follows (new text is **bold and underlined**; text to be deleted is ~~**bold and stricken-through**~~):”

30-8.27 Signs.

G. Penalties. Public Access signs.

1. Signs shall be erected at all public access points identifying the area as such.

2. Public access signs shall be maintained by the property owner and clear of obstruction and visible to the public.

G. H. Penalties.

1. In addition to actions for specific performance requiring the removal of any non-permitted sign, the Borough of Monmouth Beach may file a complaint in the Municipal Court of the Borough of Monmouth Beach. Penalties for a violation of this section shall be a fine of not less than \$50 nor more than \$1,500 for each day the non-permitted sign remains. Notwithstanding any other provision of the "Land Use and Development Regulations" there shall be no requirement of advance notice prior to issuance of a Municipal Court Complaint. [Ord. No. O-24-06, 3-14-06; Ord. No. O-09-2015]

Appendix 8

THIS STATE AID AGREEMENT Contract #1239 made and executed this
11th day of November, Nineteen Hundred and Eighty-Nine BY AND BETWEEN
the Borough of Monmouth Beach, a municipal corporation, in the County of
Monmouth, New Jersey, hereinafter called the "Municipality", party of the
first part; and the DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF
COASTAL RESOURCES OF THE STATE OF NEW JERSEY, hereinafter called the
"Division"; party of the second part.

WITNESSETH: WHEREAS, the Water Resource Development Act of
1986, P.L. 99-662, dated November 3, 1986, authorized the construction of
the Ocean Township to Sandy Hook increment of the previously authorized
Federal Beach Erosion Control Project, Sandy Hook to Barnegat Inlet, New
Jersey; and

WHEREAS, the non-Federal share of this beach erosion project
shall consist of the amounts expended for the reconstruction of the
existing stone seawall in Monmouth Beach; and

WHEREAS, the non-Federal interest, State and local municipali-
ty, must provide public access to the seawall and beach for which such
increment of the project is authorized in accordance with all require-
ments of State law and regulations; and

WHEREAS, the Water Resource Development Act of 1988, amended
the Water Resource Development Act of 1986 to say, for the first \$40.0
million in cost towards the placement of sand beachfill in the beach
erosion control project, the non-Federal share shall be the amount
expended for the reconstruction of the existing seawall; for the cost in
excess of \$40 million, the non-Federal share shall be shared on a 65%
Federal and 35% non-Federal basis, with credit to non-Federal share for
the value of land, easements, right-of-ways and relocations; and

WHEREAS, the Municipality has agreed to cost share on a 75/25
basis, the reconstruction of the existing stone seawall, to provide
public access to the seawall and the sand beach, and to cost share with
the State the non-Federal cost of the sand beachfill; and

WHEREAS, the reconstruction of the stone seawall is authorized
and funds appropriated; Account 4890-534-861000-61, by the laws of the
State of New Jersey under Chapter 19, Laws of 1988; and

WHEREAS, the placement of sand beachfill is authorized under the laws of the State of New Jersey, N.J.S.A. 12:6a-1 et seq. and Chapter 356, P.L. 83, and the funding for the State share of the non-Federal cost is depending on future legislative action; and

WHEREAS, the Municipality has applied for funding on a 75/25 ratio matching basis for seawall repair and beach nourishment along the Atlantic Ocean shorefront in the Borough of Monmouth Beach, Monmouth County, New Jersey at a total cost of \$3,081,948 ;and

WHEREAS, the Shore Protection Program procedural rules (N.J.A.C. 7:7E-1 et seq.) require that grants and loans be conditioned upon compliance with the Department's Rules on Coastal Resources and Development (N.J.A.C. 7:7E-1 et seq.) in four policy areas: Public Access to the Waterfront (7:7E-8.11), Beaches (7:7E-3.20), Dunes (7:7E-3.21), and Erosion Hazard Areas (7:7E-3.23); and

NOW THEREFORE, the parties hereto do mutually agree as follows:

- (1) The Division of Coastal Resources shall be responsible for the proper completion of seawall repair and beach nourishment in the Borough of Monmouth Beach, Monmouth County, New Jersey.

- (2) The Municipality shall be responsible for paying the 25% share of the project cost, pursuant to Contract #1239, which amounts to \$770,487. ~~This payment must be received~~

~~by the State of New Jersey prior to the bidding of the shore protection project~~


The Municipality shall adopt or amend Ordinances which protect beaches and dunes within six months of the date of this contract, as explained in Attachment A. The Municipality shall also amend or adopt land use ordinances to regulate, and reduce development in erosion hazard areas within six months of the date of this contract, as explained in Attachment B. These ordinances must be approved by the Division. Any further revisions or amendments to these ordinances must first be submitted to and approved by the Division of Coastal Resources. Any applications for variances from these ordinances must

da 11/13/89
Jaw
CZ 11/17/89
12/1/89
(3)

first be submitted to and approved by the Division of Coastal Resources.

- (4) The Municipality shall be responsible, at a minimum, for providing public access as described in Attachment C.
- (5) The Borough of Monmouth Beach will be responsible for obtaining any and all construction, maintenance and public access easements as required by the Division's Bureau of Coastal Engineering, including but not limited to those areas listed in Attachment D, and supply copies of said easements to the Division after being recorded with the Monmouth County Clerk. Copies of the recorded easements must be received by the Division no later than November 1, 1989.
- (6) The Municipality agrees that in the event that it fails to comply with the beach, dune and erosion hazard area protection undertakings set forth in Paragraph 3, the public access undertakings set forth in Paragraph 4, or the easement acquisitions set forth in Paragraph 5, that it will repay to the Division the 75% state share provided for in this contract, with simple interest accruing from the date the project was completed until the money is repaid, at a rate equal to the prime interest (rate) as published in the New York Times business section. The municipality also acknowledges that failure to adhere to Paragraphs 3, 4 and 5 and Attachments shall determine eligibility for future shore protection funds.
- (7) Either party to this contract may recommend modifications to this agreement as their need becomes evident. Modifications will be made only with the written consent of the Division of Coastal Resources and the Municipality.
- (8) The Division and the Municipality will provide the non-Federal share of the beachfill project cost, to the Department of the Army, 60 days prior to the award of the beachfill contract. This non-Federal cost will be shared on a 75/25 basis (state/municipal).


IN WITNESS WHEREOF, The Municipality and the Division have
hereunto set their respective names and seals on the day and year first
written.

BY 
Bonnie D. Moore, P.E.

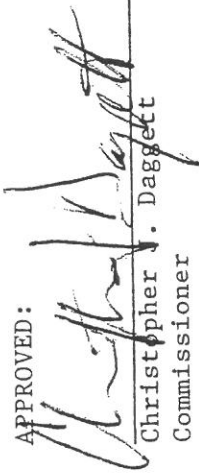
ATTEST:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COASTAL RESOURCES OF THE
STATE OF NEW JERSEY

BY 
John R. Weingart, Director

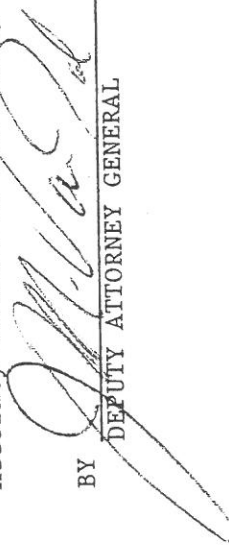

Bernard J. Moore
Assistant Director for Engineering
and Construction

APPROVED:


Christopher J. Daggett
Commissioner

The aforementioned agreement has been reviewed and approved as to
form.

PETER N. PERRETTI, JR.
Attorney General of New Jersey

BY 
DEPUTY ATTORNEY GENERAL

NEW JERSEY

MUNICIPAL RESOLUTION

WHEREAS, The Borough of Monmouth Beach, County of Monmouth, New Jersey, has applied for State Aid for seawall repair and beach nourishment, and the cost thereof is subject to a 75/25 ratio matching basis under State Project No. 1239;

BE IT RESOLVED, by the Borough of Monmouth Beach, County of Monmouth, State of New Jersey that the Mayor be and is authorized to execute and deliver to the Department of Environmental Protection, Division of Coastal Resources of the State of New Jersey, a contract on behalf of the Borough of Monmouth Beach for the purpose of obtaining state aid under Project No. 1239 for shore protection work as aforesaid designated and described. The Borough of Monmouth Beach also agrees to pay the 25% Municipal share (\$770,487) to the State of New Jersey, prior to the bidding of the shore protection project. The Municipality also agrees to abide by the four Coastal Policies as set forth in paragraphs 3 and 4 of the Contract as well as all other provisions of the contract.

Dated: October 10th 1989.

James J. Fahren

David D. Moore
P.N.C.

Certification by

I hereby certify that the foregoing is a true copy of a resolution adopted by the Council at a meeting held October 10, 1989. ,

In Testimony Whereof, I have hereunto set my hand and affirmed the seal of the Borough of this 10th day of October,
Monmouth Beach
1989

David D. Moore, P.N.C.
Borough Clerk.

STATE OF NEW JERSEY)
COUNTY OF MERCER)

SS:

BE IT REMEMBERED THAT, ON THIS 13th day of *October, 1989*
before me a Notary Public of New Jersey personally appeared BERNARD J. MOORE, who being by me sworn on his oath that he is the Assistant Director for Engineering and Construction of the New Jersey State Department of Environmental Protection, Division of Coastal Resources, that he well knows the seal of the said Division, that the seal affixed to the foregoing instrument is the seal of said Division, that the seal was so affixed and the instrument signed and delivered by John R. Weingart who was at the date thereof, the Director of the Division of Coastal Resources of the New Jersey Department of Environmental Protection, and who in the presence of this deponent, signed, sealed, and delivered the same as his voluntary act and deed, and that deponent at the same time, subscribed his name to said instrument as an attesting witness to the execution thereof.

[Signature]

SWORN AND SUBSCRIBED
BEFORE ME AT
THE DATE AFORESAID

Austen K. Brown
Notary Public of New Jersey

SUSAN K. BROWN
NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires Dec. 16, 1990

ATTACHMENT A

1. Beaches:

Beaches are gently sloping unvegetated areas of sand or other unconsolidated material that extend landward from the mean high water line to either: (1) the vegetation line, (2) a man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas, or (3) the seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters. Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

A. Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are;

- (i) Demolition and removal of paving and structures,
- (ii) Dune creation and related sand fencing and planting of vegetation for dune stabilization,
- (iii) The reconstruction of existing amusement and fishing piers and boardwalks,
- (iv) Temporary recreation structures for public safety such as first aid and lifeguard stations,
- (v) Linear development which meets the policy on Location of Linear Development (7:7E-6.1).

2. Dunes:

A dune is a wind or wave deposited or man-made formation of vegetated or drifting wind blown sand, that lies generally parallel to, and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope.

"Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. Formations and sand immediately adjacent to beaches that are stabilized by retaining structures, and or snow fences, planted vegetation, and other measures are considered to be dune regardless of the degree of modification of the dune by wind or wave action or disturbance by development. A small mound of loss, wind blown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune".

A. Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

- (i) Demolition and removal of paving and structures,
- (ii) Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runoff,
- (iii) Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference which the beach and dune system,
- (iv) The planting of native vegetation to stabilize dunes,
- (v) Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation.

- (vi) Shore Protection Structures which meet the Use conditions of Section 7:7E-7.11(e), and
- (vii) Linear development which meets the DEP Policy on Location of Linear Development (7:7E-6.1).

ATTACHMENT B

1. Erosion Hazard Areas:

Erosion Hazard Areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms. Development is prohibited in erosion hazard areas, except for

1. Linear development which complies with the Division's policy on location of Linear Development (N.J.A.C. 7:7E-6.1), and

2. Shore protection activities which meet the appropriate Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11).

The extent of the Erosion Hazard Area may be calculated by multiplying by fifty the projected annual erosion rate, as determined by the Division of Coastal Resources.

ATTACHMENT C

1. Public Access to the Waterfront

The municipality must provide perpendicular and linear access to the waterfront. The municipality can charge a reasonable fee for access to these areas, subject to other applicable laws and court decisions. This area must be open equally to all people and its use may not in any way be restricted to use by municipal or county residents, members of a beach club or association or any other group. Specifically, this access must be provided from the area along and/or inshore of the seawall, along the top of the seawall and onto the beach, and along the entire beachfront, except for any privately granted beaches, which must provide full access to all new beach areas resulting from the beachfill project. Upon completion of the proposed beach nourishment, the Division will be responsible for the construction of 3 sets of access stairways leading from the inshore side of the seawall, across the top of the seawall, and down to the beach. The Division will also provide signs showing these designated public access points.

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- A. All parking at the Borough owned Bathing Pavilion must be available to all members of the public.
- B. A total number of five Bathing Pavilion parking spaces must be reserved for handicapped drivers, and must remain open to the public.
- C. The Borough must provide public parking on Block 45-C, Lot 36, Block 51, Lot 18, Block 46, Lot 10, and the available portions of Block 18, Lots 8 and 9. These spaces must remain open to the public.
- D. The Borough must retain ownership of Block 18.01, Lot 7, and provide public parking on this site.
- E. The Borough must pass a Resolution which would allow limited on-street parking for one side of State Highway 36 (Ocean Avenue). This Resolution must then be submitted to DOT Region 3 design section for their review and approval. The DOT has

indicated that the Route 36 shoulders provide adequate area (12 feet wide) for on-street parking.

In addition, the Borough must submit to the Division a progress report detailing the status of these public access requirements. This progress report must be received by the Division no later than December 1, 1990, one year prior to the completion of the seawall construction.

ATTACHMENT D

MONMOUTH BEACH

PERMANENT EASEMENTS TO BE ACQUIRED

<u>BLOCK NO.</u>	<u>LOT</u>	<u>DESCRIPTION</u>
1	1	All property east of the westerly toe of the seawall
	2,2.01	"
	15,15.01	"
	3,4	"
	5	Exempt-Borough
	5.01	All property east of the westerly toe of the seawall
	6,7,8	"
	9,9.01	"
	14	"
	10	"
16	11,11.01	"
	12,13	"
	1	All property east of the westerly toe of the seawall
	2	Exempt-Borough
	2.03,2.02	All property east of the westerly toe of the seawall
	6	Exempt-Borough
	3,4,5	All property east of the westerly toe of the seawall
	7,8	"
	9	Exempt-Borough
	10-18	All property east of the westerly toe of the seawall
22	1,2,3,	All property outshore of a line 25 feet west of the inshore toe of the seawall (This line is extended to the end of the block in the area where the seawall does not exist)

48	1,12	All property extending eastward from the inshore edge of the crest of the seawall
48.01	11	" "
	9	" "
	10	" "
50	1.01	Exempt-Borough
	3.01	" "
	4.01	" "
	5-13	All property eastward from a line 25 feet west of the inshore edge of the toe of the seawall
	5.01-	Exempt-Borough
	15.01	" "
	14.02,	Exempt Borough
	15.02	" "
	14,15	Not included in project

STATE AID AGREEMENT

BETWEEN

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

THE BOROUGH OF MONMOUTH BEACH

PROJECT NO. 4209-08

MONMOUTH BEACH SEAWALL MAINTENANCE PROJECT

THIS AGREEMENT made and executed this 21st day of May,

Two Thousand and Nine BY AND BETWEEN THE BOROUGH OF MONMOUTH BEACH, a Municipal Corporation in the County of Monmouth, New Jersey, hereinafter called the "Municipality", and the STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, hereinafter called the "Department", OFFICE OF ENGINEERING AND CONSTRUCTION hereinafter called the "Office".

WHEREAS, The Borough of Monmouth Beach requested state aid assistance for a seawall maintenance project that includes the continued maintenance of the seawall along the Atlantic Ocean in the Borough of Monmouth Beach; and

WHEREAS, the Office has the full authority to perform all of its responsibilities for the project under New Jersey State Law PL 92, c. 148; PL 95, c. 164 and N.J.S.A. 12:6A-1, et seq.; and

WHEREAS, the Municipality has the full authority to perform all of its responsibilities for the project under N.J.S.A. §§ 40:56-1, et seq., 40:69A-1, et seq., and 40A:12-1, et seq. and the applicable municipal code, and the Mayor of the Municipality is duly authorized to enter this Agreement; and

WHEREAS, the Office approved a State Aid grant in Fiscal Year 2008 in the amount of \$2,000,000.00 of estimated eligible project costs to the Borough of Monmouth Beach for seawall maintenance work; and

WHEREAS, the Office, pursuant to said approval by the Department, will execute a formal contract for construction of the project in compliance with public contract laws; and

WHEREAS, the cost sharing of this construction shall be 75% State and 25% Borough of Monmouth Beach; and

WHEREAS, State Aid funding shall be utilized for actual construction work and materials. No funds shall be paid for administrative costs, permits, engineering, or legal fees; and

WHEREAS, the Department and the Municipality must provide public access to and use of the Monmouth Beach seawall and Atlantic Ocean benefited by the project in accordance with State laws and regulations; and

WHEREAS, the expenditure of public funds is conditioned upon compliance with the State of New Jersey Department of Environmental Protection's Coastal Zone Management rules and all other applicable laws, rules and regulations; and

WHEREAS, on March 12th 2009 the New Jersey Department of Environmental Protection issued Waterfront Development Permit #1333-08-0005.1 (CAF/WFD 080001) for the reconstruction of the Monmouth Beach Seawall; and

WHEREAS, the municipality has approximately 281 parking spaces on the public streets within ¼ mile inland of the project area; and

WHEREAS, there is one set of public access stairs leading to the beachfront over the seawall at Cottage Road located approximately 1000 feet north of the northern most project extent; and

WHEREAS, there is one set of public access stairs leading to the beachfront over the seawall at the Monmouth Beach Bathing Pavilion located approximately 400 feet south of the southern most project extent; and

WHEREAS, the municipality and Office will construct one set of public access stairs leading to the beachfront over the seawall within the project area between the Shores and Admiralty Condominium Associations; and

WHEREAS, the municipality provides a portable restroom at the Seaview Avenue parking lot located approximately 1,000 feet southwest of the southern most project extent and the municipality also provides restroom facilities at the Borough Pavilion located approximately 600 feet from the southern most project extent; and

NOW THEREFORE, both parties hereto do mutually agree as follows:

(1) Municipality shall provide easements for the properties listed in Appendix B and, in accordance with the terms of Appendix C, necessary for public access to and use of the entire beachfront, seawall, and tidal lands. The easement shall also provide construction access necessary for initial construction and routine maintenance to be performed by the Municipality, including providing access to the Office, the Department, and the Army Corps of Engineers, their representatives, employees, agents, and contractors. The certification that perpetual easements in accordance with Appendix C have been obtained and recorded shall be provided to the Office prior to bidding the project.

(2) In satisfying its obligations in this Agreement, the Municipality shall comply with all of the Department's Coastal Zone Management rules (N.J.A.C. 7:7E-1 et seq.) including but not limited to: Coastal High Hazard Areas (7:7E-3.18); Erosion Hazard Areas (7:7E-3.19); Beaches (7:7E-3.22); Endangered or Threatened Wildlife or Plant Species Habitat (7:7E-3.38); Coastal Engineering (7:7E-7.11).

(3) All public access resulting from the operation of this Agreement shall be provided in a nondiscriminatory manner in accordance with law.

(4) If the Municipality does not fully comply with the above requirements the Municipality will be in breach of its obligations under this Agreement unless the Office, in its sole discretion, determines to extend the time for compliance. If the Office elects not to extend the time for compliance, the Municipality will be deemed in breach, and the Office may exercise any remedy available to it under this Agreement or at law or equity, including a remedy to require specific performance by the Municipality of its obligations under this Agreement.

(5) The Municipality as a public entity recognizes its continuing obligation to ensure compliance with the Public Trust Doctrine.

(6) Bulldozing, excavation or mechanical alteration of any dune is strictly prohibited, except as permitted by the Department's Standards for Beach and Dune Activities N.J.A.C 7:27B-3A.

(7) The Municipality, pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.), its implementing regulations (50 CFR Part 17), and U.S. Fish and Wildlife Service documents entitled, "Biological Opinion On The Effects Of Completion Of Section I and II of the Atlantic Coast of New Jersey Beach Erosion Control Project Sea Bright to Manasquan, Monmouth County, New Jersey on the Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus pumilus*)" dated September 2002, shall continue to implement the federally approved management plan entitled, "Borough of Monmouth Beach - Beach Management Plan for the Protection of Federally and State Listed Species" for the entire municipality.

(8) The Municipality shall allow the Office, the Department, the Army Corps of Engineers, and their representatives, agents, contractors the right to access and conduct project operations along the seawall and beachfront during and after periods of construction, surveillance, monitoring, engineering and environmental data collection. Project operations shall include any activities necessary for effecting or verifying any provisions of this Agreement.

(9) The Office will pay 75% of the funding for the construction of this project and the Municipality will pay 25%, as per the Project Cost Sharing Analysis at Appendix A. The Municipality's share is to be paid to the Office in accordance with (10), (11), and (12) below. The cost of any engineering monitoring necessary for the project is not part of the cost to be shared under this Agreement. The Municipality is responsible for 100% of all costs associated with engineering design, preparation of plans, and completion of final specifications.

(10) The approximate total cost as detailed in Appendix A is estimated as follows: \$2,666,667.00.

(11) All project costs are estimates subject to adjustment by the Office, increases or decreases in equipment and material costs, and inflation, and are not to be construed as the total financial responsibilities of the State and the Municipality. The cost of the project may increase due to the linear footage of the seawall, increased quantity of stone required, and cost for construction. The cost of the project may increase due to requested betterments, i.e. additional work to the project paid for at 100% cost by the municipality for non shore protection work. The final cost will be based on actual cost as documented by records maintained by the Office.

(12) The Municipality's 25% share of the projected cost of the project is due to the Office no later than 30 days from the Municipality's receipt of the determination of low bid letter from the Office. The Office shall not execute a contract for construction of the project until the Municipality pays to the Office their respective 25% share of the contract amount. The cost of the project may increase due to unforeseen reasons and the final cost will be based on actual cost as documented by records maintained by the Office. The Office will invoice the Municipality for the Municipality's 25% share of any increase in project cost, prior to the closeout of the construction contract for the project. The Municipality shall make payment within 30 days of its receipt of the invoice, unless the Office agrees to a longer time period. If the Municipality fails to provide its share of the funding in the time and manner required or otherwise breaches any obligation under this Agreement, then the Office reserves all legal recourse including but not limited to seeking injunctive relief to force compliance or commencing an action in a court of appropriate jurisdiction to obtain an accounting and to recover the State's share of any funds provided to the Municipality under this Agreement, plus interest, legal costs and other expenses. If the Municipality fails to provide its share of the funding in the time and manner required or otherwise breaches any obligation under this Agreement, the Office reserves the right to cease its performance under this Agreement. Further, if the Municipality fails to provide its share, or any portion thereof, of the funding in the time and manner required, the Office reserves the right to withhold from the Municipality payment of funds for present or future work on any phase of the project necessary for the Office to recover that share of the funding that the Municipality has failed to provide. Prior to instituting any action under this provision, the Office shall serve the Municipality with a written notice of the violation of the Agreement and the Municipality shall have 60 days to cure any breach or nonpayment. In addition, if the Municipality fails to perform in accordance with this Agreement, its eligibility for future shore protection funds may be impacted.

(13) If the Office fails to receive annual appropriations in amounts sufficient to meet the Office's project costs for the then current or upcoming fiscal year, the Office shall so notify the Municipality in writing, and 60 days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. Such suspension shall remain in effect until such time as the Office receives sufficient appropriations or until either party elects to terminate this Agreement. Any such termination shall not relieve the parties of liability for any obligation previously incurred.

(14) All notices under this agreement shall be sent in writing to:

For the Office:

David Rosenblatt, Administrator
Office of Engineering & Construction
1510 Hooper Avenue, Suite 140
Toms River, New Jersey 08753

For the Municipality:

The Honorable Susan Howard, Mayor
Borough of Monmouth Beach
22 Beach Road
Monmouth Beach, New Jersey 07750-1398

The Municipality herein represents that it has complied with all conditions and obligations imposed by any prior State Aid Agreement with the Department or the Office or has entered into a compliance schedule, which is made a part of this Agreement and is attached hereto.

(15) The waiver of a breach of any of the terms or conditions of this Agreement by the Office shall not constitute a waiver of any subsequent breach. Any consent by the Office to a delay in the Municipality's performance of any obligation shall apply only to the particular transaction to which the consent to delay relates, and it shall not be applicable to any other obligation or transaction under this Agreement.

(16) In the event that any one or more of the provisions of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, or by law, such determination will not render this Agreement invalid or unenforceable and the remaining provisions hereof shall remain in full force and effect.

(17) Nothing contained herein shall be construed so as to create rights in any third party.

(18) This agreement will take effect upon execution by all parties and will remain in effect, except as otherwise provided in the Agreement, and can be amended by agreement of the parties.

(19) This Agreement may be executed in counterparts.

(20) If any provision of this Declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Declaration and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

(21) This Agreement shall be interpreted in accordance with the laws of the State of New Jersey.

(22) Once the project is complete, the Municipality is responsible for all future maintenance and costs associated with upkeep and repair of the project.

(23) The municipality acknowledges that they own the seawall immediately behind and/or under the rocks which were placed by the Army Corps of Engineers New York District and the Office during the notching of the groins.

(24) All parties understand and agree that the intent of this project is to provide shoreline stabilization and storm damage reduction along the Atlantic Ocean. This project has been designed by the Borough of Monmouth Beach and reviewed by the Office. Due to natural forces and/or changing conditions, there is no guarantee that the seawall will persist or maintain its engineering integrity and effectiveness post construction.

IN WITNESS WHEREOF, the Municipality and the Office have hereunto set their
respective names on the day and year first above written.

BOROUGH OF MONMOUTH BEACH

ATTESTED:

BY 

Susan Howard

Mayor

Borough of Monmouth Beach



Joyce L. Escalante

Municipal Clerk

Borough of Monmouth Beach

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF ENGINEERING & CONSTRUCTION

STATE OF NEW JERSEY

ATTESTED:

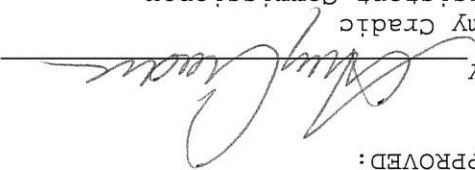
BY 

David Rosenblatt

Administrator

Office of Engineering & Construction

APPROVED:

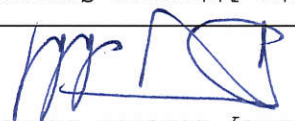
BY 

Amy Cradic

Assistant Commissioner

Natural & Historic Resources

The aforementioned agreement has been reviewed and approved as to form.

Anne Milgram
Attorney General of New Jersey
BY 
Deputy Attorney General

APPENDIX A
PROJECT 4209-08
BOROUGH OF MONMOUTH BEACH
SEAWALL MAINTENANCE PROJECT
COST SHARING ANALYSIS

Total Estimated Project Cost:	\$2,666,667.00
Borough of Monmouth Beach 25% Share:	\$ 666,667.00
State of New Jersey 75% Share:	\$2,000,000.00

APPENDIX B

EASEMENTS WILL BE ACQUIRED FOR:

Base Bid	
Block	Lot
48	12
48	15.13
48.01	11
48.01	12.13
48.01	12.14
Option Work	
48.01	9.13
Private- Not Obtained	

Prepared by: _____

DEED OF DEDICATION AND PERPETUAL STORM

DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION EASEMENT is made this _____ day of _____ 2009 BY AND BETWEEN

whose address is

referred to herein as the Grantor,

AND

THE BOROUGH OF MONMOUTH BEACH, a Municipal Corporation of the State of New Jersey whose address is Municipal Clerk, 22 Beach Road, Monmouth Beach, New Jersey 07750,

AND THE STATE OF NEW JERSEY referred to herein collectively as the Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the Borough of Monmouth Beach, County of Monmouth, State of New Jersey, and identified as, and limited to, that portion of Block _____, Lot _____, located easterly of the landward toe of the seawall as depicted on Attachment "A" and Block _____, Lot _____ on the official tax map of the Borough of Monmouth Beach, hereinafter the "Property", and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantees recognize that the beach and associated seawall at the Borough of Monmouth Beach, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of the Grantor and of all of the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section I Sea Bright to Ocean Township, Beach Erosion Control Project, as defined in the July 30th, 1992 Local Cooperation Agreement, between the Department of the Army and the State of New Jersey, as well as all associated municipal seawall work, hereinafter "Project"; and,

WHEREAS, construction of the Project includes periodic renourishment and associated municipal seawall work, which may be performed solely by the grantees or in conjunction with the United States Army Corps of Engineers; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual Storm Damage Reduction Easement on portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers and the State of New Jersey will not participate in the Project unless the Grantees acquire the real property interest herein described in all real property needed for the Project; and,

WHEREAS, the Borough of Monmouth Beach shall consider this Deed of Easement in establishing the full assessed value of any lands subject to such restrictions; and,

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and any dune that is created naturally or mechanically are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach, municipal seawall, and ocean.

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section I, Sea Bright to Ocean Township Beach Erosion Control Project, as well as all associated municipal seawall work on, over and across that land of the property as shown on the Borough of Monmouth Beach official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Borough of Monmouth Beach, their representatives, agents, contractors and assigns to; provided, however, as regards Block , Lot , the rights granted hereunder shall be limited to, that portion of the lot located easterly of the landward toe of the seawall as depicted on Attachment "A":

a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach and any subsequent dune system, and other erosion control and storm damage reduction measures together with apurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;

b. Move, temporarily store and remove equipment and supplies;

c. Erect and remove temporary structures;

d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section I, Sea Bright to Ocean Township, Beach Erosion Control Project and all associated seawall work together with the right of public use and access;

e. Post signs, plant vegetation on sand dunes and berms;

f. Erect, maintain, and remove silt screens and snow fences;

g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;

h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement.

i. Implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean.

The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns the right to construct a private dune/seawall overwalk structure that is for the Grantor's exclusive use in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and specifications for such structures must be obtained from the Borough of Monmouth Beach and the State of New Jersey. Grantees may not condition approval of the maintenance, construction, reconstruction, or repair of such structure on its being open, accessible or for the use of the public. Such structure is to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor

hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the Borough of Monmouth Beach, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Monmouth Beach or the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land; provided, however, the rights granted hereunder are limited to and may be exercised only in connection with the Project.

The Borough of Monmouth Beach to Maintain Beach and Municipal Seawall: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area and seawall abutting grantor's lands to be routinely maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to routinely maintain the beach area and municipal seawall.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the grantee or otherwise permit the grantee or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the zoning ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the grantees and any forbearance by grantees to exercise their rights under this Easement in the event of any violation by grantor shall not be deemed or construed to be a waiver by grantees of such term or of any subsequent violation or of any of grantees' rights under this Easement. No delay or omission by grantees in the exercise of any right or remedy upon any violation by grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.

2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.

3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the GRANTOR
Witnessed by:

GRANTOR
Date

Accepted by the
Borough of Monmouth Beach,
GRANTEE

BY: (Name of Official)
Date

Accepted by the
State of New Jersey, GRANTEE

BY: Date

STATE OF NEW JERSEY, COUNTY OF MONMOUTH SS.:

I CERTIFY that on 2009,

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

1) is named in and personally signed this Deed of Easement;

2) signed, sealed and delivered this Deed of Easement as his or her act and deed;

3) holds the requisite ownership interest and authority to execute this Deed of Easement; and

4) made this Deed of Easement for the full and actual consideration as set forth herein.

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

EXEMPT

RR

RECORD AND RETURN TO:

Dennis A. Collins, Esquire
 Collins, Vella & Casello, L.L.C.
 1451 Route 34 South, Suite 303
 Farmingdale, NJ 07727

#150

Prepared by:

Dennis A. Collins

DEED OF DEDICATION AND PERPETUAL STORM

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION
 EASEMENT is made this 30 day of June 2011 BY AND

BETWEEN

BORO OF MONMOUTH BEACH



whose address is

22 BEACH ROAD MONMOUTH BEACH, NJ 07750

referred to herein as Grantor,

AND

THE BOROUGH OF MONMOUTH BEACH, a Municipal Corporation of the State of New
 Jersey whose address is Municipal Clerk, 22 Beach Road, Monmouth Beach, "New Jersey
 07750, AND **THE STATE OF NEW JERSEY** referred to herein collectively as the Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tracts of land, located in the Borough
 of Monmouth Beach, County of Monmouth, State of New Jersey, and identified as Block 1
 Lot 3; Block 1, Lot 5; Block 1 Lot 7; Block 16, Lot 1; Block 16, Lot 2; Block 16, Lot 3; Block
 16, Lot 4; Block 16, Lot 5; Block 16, Lot 6; Block 16, Lot 8; Block 16, Lot 9; Block 16, Lot 12;
 Block 16, Lot 12.01; Block 16, Lot 13; Block 16, Lot 14; Block 16, Lot 15; Block 16, Lot 16;
 Block 50, Lot 1.01; Block 50, Lot 3.01; Block 50, Lot 4.01; Block 50, Lot 5.01; Block 50, Lot
 6.01; Block 50, Lot 7.01; Block 50, Lot 8.01; Block 50, Lot 9.01; Block 50, Lot 10.01; Block
 50, Lot 11.01; Block 50, Lot 12.01; Block 50, Lot 13.01; Block 50, Lot 14.02; on the official
 tax map of the Borough of Monmouth Beach, hereinafter the "Property," and Grantor holds
 the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantees recognize that the beach and associated seawall at the
 Borough of Monmouth Beach, New Jersey is subject to constant erosion and degradation,
 thereby destroying a valuable natural resource and threatening the safety and property of
 the Grantor and of all of the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other and/or the United
 States Army Corps of Engineers to construct the Atlantic Coast of New Jersey, Sandy Hook
 to Barnegat Inlet, Section I, Sea Bright to Ocean Township, Beach Erosion Control Project, as
 defined in the July 30th, 1992 Local Cooperation Agreement between the Department of the
 Army and the State of New Jersey, as well as all associated municipal seawall work,
 hereinafter "**Project**"; and,

WHEREAS, construction of the Project includes periodic renourishment and
 associated municipal seawall work, which may be performed solely by the Grantees or in
 conjunction with the United States Army Corps of Engineers; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual
 Storm Damage Reduction Easement on portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers and/or the State of New
 Jersey will not participate in the Project unless the Grantees acquire the real property
 interest herein described in all real property needed for the Project; and,

WHEREAS, the Borough of Monmouth Beach shall consider this Deed of Easement in
 establishing the full assessed value of any lands subject to such restrictions; and,

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 00'08\$ COUNTY RECORDING FEES
 Total Pages: 5
 PAGE: 4449
 BOOK: 08-8900
 9:59:44 AM
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 2011067374
 INSTRUMENT NUMBER
 MONMOUTH COUNTY, NJ
 M CLAIRE FRENCH, CTY CLK

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Granter acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and any dune that is created naturally or mechanically are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach, seawall, and ocean.

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section I, Sea Bright to Ocean Township Beach Erosion Control Project, as well as all associated municipal seawall work in, on, over and across that land of the Property as shown on the Borough of Monmouth Beach official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Borough of Monmouth Beach, their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach and dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section I, Sea Bright to Ocean Township, Beach Erosion Control Project and all associated seawall work together with the right of public use and access;
- e. Post signs, plant vegetation on said dunes and berms;
- f. Erect, maintain, and remove silt screens and snow fences;
- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;
- h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement;
- i. Implement the Public Trust Doctrine and ensure permanent public access, use, and enjoyment of the beach and ocean.

The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private dune/seawall overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and specifications for such structures must be obtained from the Borough of Monmouth Beach and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project.

The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the Borough of Monmouth Beach, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Monmouth Beach or the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

The Borough of Monmouth Beach to Maintain Beach and Municipal Seawall: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area and seawall abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area and municipal seawall.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent violation or of any of Grantee's rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.
5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not: a part of this instrument and shall have no effect upon its construction or interpretation.

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, P.L.1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY

COUNTY Monmouth } SS. County Municipal Code 1334

MUNICIPALITY OF PROPERTY LOCATION Boro of Monmouth Beach

FOR RECORDER'S USE ONLY
Consideration \$ _____
RTF paid by seller \$ _____
Date By _____

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (Instructions #3 and #4 on reverse side)

Deponent, Borough of Monmouth Beach, being duly sworn according to law upon his/her oath,
(Name)
deposes and says that he/she is the Grantor _____ in a deed dated June 30, 2011 transferring
(Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.)
real property identified as Block number 1 Lot number 3 located at
Ocean Avenue, Monmouth Beach, New Jersey and annexed thereto.
(Street Address, Town)

(2) CONSIDERATION \$ _____ (Instructions #1 and #5 on reverse side) ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:
(Instructions #5A and #7 on reverse side)

Total Assessed Valuation + Director's Ratio = Equalized Assessed Valuation

\$ _____ + _____ % = \$ _____

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE (Instruction #8 on reverse side)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail:

b) By or to the United States of America, this State, or any instrumentality, agency or subdivision.

(5) PARTIAL EXEMPTION FROM FEE (Instruction #9 on reverse side)

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

- A. SENIOR CITIZEN Grantor(s) ☐ 62 years of age or over. * (Instruction #9 on reverse side for A or B)
B. { BLIND PERSON Grantor(s) ☐ legally blind or, *
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet all of the following criteria:

- ☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. LOW AND MODERATE INCOME HOUSING (Instruction #9 on reverse side)

- ☐ Affordable according to H.U.D. standards. ☐ Reserved for occupancy.
☐ Meets income requirements of region. ☐ Subject to resale controls.

(6) NEW CONSTRUCTION (Instructions #2, #10, #12 on reverse side)

- ☐ Entirely new improvement. ☐ Not previously occupied.
☐ Not previously used for any purpose. ☐ "NEW CONSTRUCTION" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES (Instructions #5, #12, #14 on reverse side)

- ☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me
this 30 day of June, 20 11

Signature of Deponent

Borough of Monmouth Beach

Grantor Name

22 Beach Rd, Monmouth Bch NJ

Deponent Address

22 Beach Rd, Monmouth Bch NJ

Grantor Address at Time of Sale

XXX-XXX- 014

Last three digits in Grantor's Social Security Number

Name/Company of Settlement Officer

ALLISON A. O'NEILL
NOTARY PUBLIC
STATE OF NEW JERSEY
NO. 2336313

COMMISSION EXPIRES: OCTOBER 21, 2015

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to:

STATE OF NEW JERSEY

PO BOX 251

TRENTON, NJ 08695-0251

ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and it may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division's website at:
www.state.nj.us/treasury/taxation/lpt/localtax.shtml

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
BOROUGH OF MONMOUTH BEACH, GRANTOR

Witnessed by:

Susan Howard
GRANTOR

Joyce L. Escalante
NOTARY PUBLIC OF
THE STATE OF NEW JERSEY

Date 6/30/2011

Accepted by the
BOROUGH OF MONMOUTH BEACH, GRANTEE

Witnessed by:

JOYCE L. ESCALANTE
Notary Public of New Jersey
My Commission Exp. Oct. 10, 2016

BY:

Susan Howard
(Signature)

Susan Howard
(Print Name)

Mayor
(Official Title)

Date June 30, 2011

Joyce L. Escalante
NOTARY PUBLIC OF
THE STATE OF NEW JERSEY

JOYCE L. ESCALANTE
Notary Public of New Jersey
My Commission Exp. Oct. 10, 2016

Accepted by the
STATE OF NEW JERSEY, GRANTEE

Witnessed by:

BY: *David Rosenblatt*
David Rosenblatt
Administrator
Office of Engineering & Construction

Sharon Brown
NOTARY PUBLIC OF
THE STATE OF NEW JERSEY

Date 7-11-11

Sharon Brown
Notary Public
New Jersey
My Commission Expires 11-01-12

STATE OF NEW JERSEY, COUNTY OF MONMOUTH SS.:

I CERTIFY that on 6-30 2011, *Susan Howard, Mayor of Monmouth Beach* personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) is named in and personally signed this Deed of Easement;
- 2) signed, sealed and delivered this Deed of Easement as ^{the} his or her act and deed; of *the Borough of Monmouth Beach*;
- 3) holds the requisite ~~ownership interest and~~ authority to execute this Deed of Easement; and
- 4) made this Deed of Easement for the full and actual consideration as set forth herein.

Joyce L. Escalante
NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

JOYCE L. ESCALANTE
Notary Public of New Jersey
My Commission Exp. Oct. 10, 2016



YOUR GOALS. OUR MISSION.

MBCH01630

June 24, 2016

Ms. Georgeann Gray
Bureau of Coastal Engineering
New Jersey Department of Environmental Protection
1510 Hooper Avenue
Toms River, NJ 08753

(Via email and UPS)

**Re: Seawall Construction, Repair and Reconstruction
Signed State Aid Agreement
Borough of Monmouth Beach**

Dear Ms Gray:

Enclosed please find seven (7) copies of the final State Aid Agreement for the Monmouth Beach Seawall Repair Project. The copies have been signed by Mayor Susan Howard and Borough Clerk Joyce Escalante. Once the agreements has been signed by the State please forward a copy to the Borough Clerk for her files.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

T&M ASSOCIATES


BONNIE L. HEARD, P.E., C.M.E.

MONMOUTH BEACH BOROUGH ENGINEER

BLH:dk
Enclosures

c: Judy Wilson, Monmouth Beach Administrator *(via email with copy of encl)*
Joyce Escalante, Borough Clerk *(via email with copy of encl)*
Dennis Collins, Monmouth Beach Borough Attorney *(via email with copy of encl)*
Erick Doyle, NJDEP BCE *(via email with copy of encl)*
Robert McGowan *(via email with copy of encl)*

H:\MBCH\01630\Correspondence\Gray_B LH_Signed State Aid Agreement.doc

STATE AID AGREEMENT
BETWEEN
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
THE BOROUGH OF MONMOUTH BEACH
PROJECT NO. 4265-15-MB
SEA BRIGHT AND MONMOUTH BEACH SEAWALL REPAIR AND
CONSTRUCTION PROJECT
BOROUGH OF MONMOUTH BEACH, MONMOUTH COUNTY, NEW JERSEY

THIS AGREEMENT made and executed this _____ day of _____, Two Thousand and Sixteen **BY AND BETWEEN THE BOROUGH OF MONMOUTH BEACH**, New Jersey, hereinafter called the “Municipality” and the **STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION**, hereinafter called the “Department”, **ENGINEERING AND CONSTRUCTION, BUREAU OF COASTAL ENGINEERING** hereinafter called the “Bureau”, for the **SEA BRIGHT AND MONMOUTH BEACH SEAWALL REPAIR AND CONSTRUCTION PROJECT**, hereinafter called the “Project”.

WHEREAS, the seawall is an essential component to the comprehensive U.S. Army Corps of Engineers Sandy Hook Inlet to Barnegat Inlet Federal Beach Erosion Control Project, Sea Bright to Monmouth Beach Reach, which reduces damages to the Municipality from storm surge and erosion from coastal storm events; and

WHEREAS, Superstorm Sandy made landfall on October 29, 2012 near Atlantic City, New Jersey bringing high winds and associated storm surge to the Municipality in its wake; and

WHEREAS, the existing seawall has a gap at the Municipality’s Bathing Pavilion and Parking lot, hereinafter referred to as the “Gap”, which became the Municipality’s most significant vulnerability to storm surge; and

WHEREAS, due to the forces of Superstorm Sandy, portions of the existing seawall that protects the Municipality were substantially displaced; and

WHEREAS, upon conclusion of the storm, representatives from the Municipality, the Bureau, and the Federal Emergency Management Agency (FEMA) conducted post-storm inspections and confirmed that several portions of the seawall sustained damage; and

WHEREAS, resulting from the severity of the storm and associated damages and subsequent inspection, FEMA prepared and submitted a Project Worksheet (“PW”) for the Department to assist with the costs to rebuild, repair and reconstruct all damaged sections,

inclusive of bridging the Gap, to provide one contiguous linear seawall to protect the Municipality and its residents from a repeat of the damage to life and property that was caused by Superstorm Sandy; and

WHEREAS, the Municipality's engineering firm has been the municipal engineer for several years, and has extensive knowledge of the seawall including creating plans for previous reconstruction efforts of portions of the seawall; and

WHEREAS, in an effort to expedite the design and reconstruction of the seawall, the Bureau agreed to approve a State Aid grant to reimburse the Municipality in the amount not to exceed \$496,000.00 in the Fiscal Year 2016 to utilize the municipal engineering firm to design the seawall construction and based upon actual expenditures; and

WHEREAS, the Municipality has the full authority to perform all of its responsibilities for the project under N.J.S.A. §§ 40:56-1, et seq., 40:69A-1, et seq., and 40A:12-1, et seq., and the Mayor of the Municipality is duly authorized to enter into this Agreement; and

WHEREAS, the Municipality has agreed to, upon execution of a State Aid Agreement with the Department, execute a formal contract for professional services to the municipal engineering firm, authorizing them to provide services for the design of the project in compliance with public contract laws including the design and creation of a full permit plan, construction plan set, bid specifications, cost estimate, bidding assistance, and limited construction oversight of the project, and

WHEREAS, the Bureau, upon receipt and approval of complete design documents and pursuant to approval by the Department, will execute a formal contract for the construction of the project in compliance with public contract laws; and

WHEREAS, the Bureau will provide 100% of the funding for the prosecution of the construction project in regards to all FEMA-approved work items as identified in the obligated PW; and

WHEREAS, the expenditure of public funds is conditioned upon compliance with the State of New Jersey Department of Environmental Protection's Coastal Zone Management Rules, N.J.A.C. 7:7-1 et seq., and all other applicable laws, rules, and regulation; and

WHEREAS, the Bureau has the full authority to perform all of its responsibilities for the project under New Jersey State Law PL 92, c. 148; PL 95, c. 164; PL 99, c. 138; PL 01, c. 130; and N.J.S.A. 12:6A-1, et seq.

NOW THEREFORE, both parties hereto do mutually agree as follows:

- (1) The Municipality shall provide, through its municipal engineer, the permitting plans, construction plan set, bid specifications, cost estimate, bidding assistance, and limited construction oversight, hereinafter “design costs” of the project to rebuild, repair and reconstruct all damaged sections, inclusive of bridging the Gap, to provide one contiguous linear seawall by means of constructing a stone seawall of similar magnitude to the repaired and fully functioning seawall.
- (2) The Bureau shall reimburse the Municipality in an amount not to exceed \$496,000.00 for such efforts.
- (3) The Bureau shall reimburse the Municipality 100% of actual, verifiable engineering service (design costs) costs as previously outlined, not to exceed \$100,000.00 per month.
- (4) The Bureau shall pay 100% for all FEMA-eligible costs for construction associated with FEMA DR 4086 PW 4720, including, but not limited to the labor and materials to reconstruct and construct identified portions of the Monmouth Beach Seawall.
- (5) The Bureau shall transplant and relocate the identified living beach plantings remaining from the Municipality’s National Fish and Wildlife Foundation (NFWF) grant disturbed by the Contractor’s operations to another beachfront location identified by the Municipality adjacent to said operations. All work will be conducted after the Municipality has received all necessary approvals from NFWF to relocate the plantings which engineering services are included in reimbursable costs.
- (6) In the event there are insufficient appropriated funds in the future to meet the Bureau’s financial obligations under this Agreement, the Bureau shall notify the Municipality in writing of such insufficiency of funds and of the date the Bureau projects that the available funds will be exhausted. Upon the exhaustion of Project-related funds, all future performance under this Agreement shall be suspended.
- (7) The Bureau may elect to add additional work items requested by the Municipality to the contract as betterments provided the Municipality provides adequate plans and specifications for the solicitation of a Request for Proposal from the Contractor. All costs associated with this work, including, but not limited to design and engineering costs, permitting costs, Municipal administrative costs, legal fees, and construction oversight and inspections costs, shall be bore solely by the Municipality. The Bureau shall simply provide contract administration for the Municipality’s prosecution of additional work.
- (8) A complete cost breakdown has been provided in Appendix A.

- (9) In satisfying its obligations in this Agreement, the Municipality shall comply with all the Department's Coastal Zone Management Rules (N.J.A.C 7:7 et seq.) including but not limited to: Dunes (7:7-9.16); Overwash Areas (7:7-9.17); Coastal High Hazard Areas (7:7-9.18); Erosion Hazard Areas (7:7-9.19); Beaches (7:7-9.22); Endangered or Threatened Wildlife or Plant Species Habitat (7:7-9.36); Coastal Engineering (7:7-15.11); and Public Access to the Waterfront (7:7-16.9), as amended.
- (10) All work must adhere to the Federal Consistency Determination obtained for the project as seen in Appendix B.
- (11) Perpetual easements for real property interests necessary for the project, as listed in Appendix C, have previously been obtained. The easements provide construction access necessary for construction and routine maintenance to be performed by the Municipality, including providing access to the Bureau, the Department, their representatives, employees, agents, and contractors.
- (12) The Municipality, as a public entity, recognizes its continuing obligation to ensure compliance with the Public Trust Doctrine, including providing public access under this Agreement in a nondiscriminatory manner, in accordance with the laws of the State of New Jersey.
- (13) The Municipality shall allow the Bureau, the Department, and their agents the right to access and conduct project operations in the project area as defined in the real estate easements during and after periods of construction, surveillance, monitoring, engineering and environmental data collection. Project operations shall include any activities necessary for effecting or verifying any provisions of this Agreement.
- (14) The Bureau reserves all legal recourse including but not limited to seeking injunctive relief to force compliance or commencing an action in a court of appropriate jurisdiction to obtain an accounting and to recover the State's share of any funds used to satisfy the Municipality's obligations under this Agreement, plus interest, legal costs and other expenses. If the Municipality breaches any obligation under this Agreement, the Bureau reserves the right to cease its performance under this Agreement. Prior to instituting any action under this provision, the Bureau shall serve the Municipality with a written notice of the violation of the Agreement and the Municipality shall have 30 days to cure any breach. In addition, if the Municipality fails to perform in accordance with this Agreement, its eligibility for future shore protection funds may be impacted.
- (15) If the Federal Emergency Management Agency fails to provide its anticipated share of the project costs, the Department, in its sole discretion, shall terminate the project construction or continue at its expense.

(16) All notices under this Agreement shall be sent in writing to:

For the Bureau:

William T. Dixon, Manager
Bureau of Coastal Engineering
1510 Hooper Avenue, Suite 140
Toms River, New Jersey 08753

For the Municipality:

Joyce Escalante, Borough Clerk
Borough of Monmouth Beach
22 Beach Road
Monmouth Beach, New Jersey 07750

(17) The waiver of a breach of any of the terms or conditions of this Agreement by the Bureau shall not constitute a waiver of any subsequent breach. Any consent by the Bureau to a delay in the Municipality's performance of any obligation shall apply only to the particular transaction to which the consent to delay relates, and it shall not be applicable to any other obligation or transaction under this Agreement.

(18) In the event that any one or more of the provisions of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, or by law, such determination will not render this Agreement invalid or unenforceable and the remaining provisions hereof shall remain in full force and effect.

(19) Nothing contained herein shall be construed so as to create rights in any third party.

(20) This Agreement will take effect upon execution by all parties and will remain in effect, except as otherwise provided in the Agreement, and can be amended by agreement of the parties.

(21) This Agreement may be executed in counterparts.

(22) This Agreement shall be interpreted in accordance with the laws of the State of New Jersey.

(23) All parties understand and agree that the intent of this project is to provide coastal storm damage reduction for the protection of public and private property and infrastructure, in the Boroughs of Sea Bright and Monmouth Beach, as increased protection along with the U.S. Army Corps of Engineers ongoing Coastal and Storm Damage Reduction project. This project has been designed with oversight from the Bureau and its agents along with full cooperation by Municipality and has been reviewed and approved by the Municipality and Borough of Sea Bright. Due to natural forces and/or changing conditions, there is no

guarantee that the structure will maintain its engineering integrity and effectiveness post construction.

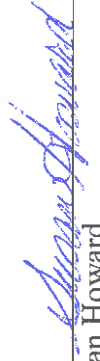
(24) Once the project is complete, the Municipality is responsible for all future maintenance costs associated with upkeep and repair of the project. Maintenance costs include, but are not limited to, repairs to concrete grout and splash pads, replacement of settled armor stone, installation of sand fence to curtail seawall face sand infilling, regrading of windblown sand, repairs to vehicular crossover, and repairs to pedestrian and handicap crossovers. All maintenance costs shall be well documented which includes but is not limited to before and after photographs, costs estimates of proposed work, final cost of the work and proof of payment and shall be provided to the Bureau on a yearly basis to ensure future eligibility of FEMA funding for any declared disasters.


(25) The Municipality shall be responsible for conducting yearly inspections of the entire seawall and shall provide such inspection reports to the Bureau for recordation purposes.

IN WITNESS WHEREOF, the Municipality and the Bureau have hereunto set their respective names on the day and year first above written.

BOROUGH OF MONMOUTH BEACH

ATTESTED:

BY 
Susan Howard
Mayor
Borough of Monmouth Beach

BY 
Joyce Escalante
Clerk
Borough of Monmouth Beach

**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENGINEERING & CONSTRUCTION
BUREAU OF COASTAL ENGINEERING**

ATTESTED:

BY _____
William T. Dixon
Manager
Engineering & Construction

APPROVED:

BY _____
Dave Rosenblatt
Assistant Commissioner
Engineering & Construction

The aforementioned Agreement has been reviewed and approved as to form.

Robert T. Lougy
Acting Attorney General of New Jersey

BY _____
David C. Apy
Assistant Attorney General

APPENDIX A



YOUR GOALS. OUR MISSION.

MBCH-01630

June 8, 2016

Mayor and Borough Commissioners
Borough of Monmouth Beach
22 Beach Road
Monmouth Beach, New Jersey 07750

Mr. William Dixon, Manager
Bureau of Coastal Engineering
New Jersey Department of Environmental Protection
1510 Hooper Avenue
Toms River, NJ 08753

**Re: Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach**

Dear Mayor, Borough Commissioners and Mr. Dixon:

As you know, the New Jersey Department of Environmental Protection (NJDEP) is working with FEMA on a Project Worksheet (PW) for the repair and reconstruction portions of the 9,900 linear foot seawall which runs between Monmouth Beach and Sea Bright. NJDEP has walked the seawall with FEMA on several occasions and the scope of repairs has been determined through these agencies. T&M Associates was asked to work with NJDEP to establish a scope of repair for each section identified on the PW, and then prepare a construction cost estimate so that FEMA could properly write the PW and agree to the scope of design.

SEAWALL REPAIR AND RECONSTRUCTION

The project entails constructing, reconstructing, repairing or partially rebuilding portions of approximately 9,900 LF of sea wall within the Borough of Monmouth Beach and the Borough of Sea Bright. Although the seawall has been divided into thirteen (13) distinct sections consisting of six (6) repair or constructions types of which five (5) sections and four (4) repair types are located in Monmouth Beach. The basis of sea wall construction and reconstruction will be "Cross-Section #2-Reduced Beach Section" from the Wave Analysis Report performed by CB&I dated September 15, 2015. T&M will produce construction bid documents for the construction or repair of the following sections in Monmouth Beach:

- Section 9 – North Monmouth Beach – Station 208 to Station 249+90; 4,190 LF - Repair of concrete splash pad on an "If and Where Directed" basis.
- Section 10 – Monmouth Beach – Scour – Station 284+55 to Station 285+55; 100 LF - Partial Demolition and reconstruction of the ocean side and toe of wall.
- Section 11 – South of Pavilion – Station 282+45 to Station 291; 855 LF - Repair of wall on an "If and Where Directed" basis utilizing a "concrete bag technique".



**Re: Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach**

- Section 12 - Admiralty Bulkhead – Station 259+50 to Station 259+75; 25 LF – Cut existing wood bulkhead to grade and backfill void with stone.
- Section 11A - Monmouth Beach Pavilion (Monmouth Beach Gap) – Station 276+12 to Station 282+45; 650 LF – Construction of new stone seawall to fill in the gap as well as construction of stair, ramps and landing replacements to address public access and accommodation changes due to the construction of the seawall.

The limits of the seawall repair and reconstruction are further identified on the conceptual plans submitted to NJDEP in correlation to the ACOE baseline starting at station 24+50 and continuing to station 291+00. A copy of these are attached to this proposal.

Monmouth Beach Bathing Pavilion

The Borough of Monmouth Beach has an existing deck located between approximate USACOE Sta. 279+00 to 281+00 (Section 11A). The deck is on the seaward side of the Monmouth Beach Public Bathing Pavilion and provides access stairs and ADA compliant ramps across the existing dune to the oceanfront. In its current location the existing ADA Ramps and access stairs will need to be removed to facilitate the construction of the seawall in this area. To restore this access, an ADA compliant ramp, stairs and landings will be provided to connect the existing deck over the seawall to the oceanfront and; a pedestrian ramp/staircase will be provided from the deck over the seawall to the oceanfront to replace the existing stairs. Although the portions of the ramps and stairs on the west side of the new seawall will be constructed on conjunction with the Borough's deck improvements, landings on top of the seawall and the following stairs and ramps on the east side of the seawall will designed and constructed as part of the subject project:

- Proposed Stairs and Landings adjacent north of the vehicle access ramp to replace the at grade pedestrian access.
- Proposed Stairs and landing south of the existing shade structure to replace existing access stairs.
- Proposed switch back ramp at the south end of the deck to replace the existing access ramp near the pool and restrooms.

The stairs, railings, slopes, hand railings and ramps will be ADA compliant where required and designed in accordance with the 2015 IBC New Jersey edition building code and supplemented by the 2010 ADA Standards for Accessible Design.

Vehicle Access Point (Monmouth Beach)

At Station 277 in the Monmouth Beach Pavilion section, The cross over is anticipated to be 16' wide by approximately 140' long on each ramp side with a single lane up and over the seawall and a single lane down. The construction is anticipated to be Concrete T-Wall, steel sheet pile or rock to enclose the ramp. Guiderails will be provided at ramp edges and fencing provided along the edge for fall protection. If T-Wall or steel is utilized it is anticipated that precast stone faced panels will be



**Re: Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach**

applied to the exterior to enhance the appearance of the ramp against the stone seawall. Lane width and crossover angle will be evaluated during preliminary design based on required turning radius of equipment and vehicles expected to use the crossover. The ramp will also provide pedestrian access at the north end of the property and a new set of stairs will be constructed on the seaward side of the wall as noted above.

Gravel Parking Area Monmouth Beach Bathing Pavilion

The area to the north of the existing bathing pavilion is designated for a contractor storage and staging area. As part of the project, a new approximately 13,100 square foot gravel parking lot will be constructed. The parking area will have a pervious gravel surface and will striped and wheel stops installed to delineate the parking spaces.

NFWF Dune Planting Replacements

The Borough, funded by a grant from the National Fish and Wildlife Foundation, constructed dunes and installed extensive plant material in front of the Bathing Pavilion. The majority of this plant material conflicts with the proposed seawall alignment and will require replacement and/or relocation. T&M will have a landscape architect develop a planting plan for the replacement and/or relocation. The scope of effort for this will include one concept meeting with Monmouth Beach, NFWF and NJDEP, preliminary planting plan submitted with the preliminary plans (1 sheet) and based on comments received a final plan and plant list for inclusion in the contract specifications. Any new permits or modifications to existing permits for the planting effort will be the responsibility of the NJDEP.

SCOPE OF SERVICES

In order to achieve the objectives of Monmouth Beach, and the NJDEP, we propose the following scope of services:

1. The construction contract for this work will be procured by the NJDEP under a single contract encompassing work in the Borough of Monmouth Beach, including the construction of ramps and stairs and landings on top and to the east of the seawall and the construction of the gravel parking area. Developing construction documents for more than one construction contract will be considered extra work. Construction documents will be prepared in accordance with NJDEP standards.
2. The limits of the construction, wall repair and reconstruction are as identified on the conceptual plans submitted to NJDEP in correlation to the ACOE baseline starting at station 24 + 50 and continuing to station 291+00. T&M anticipates that the conceptual details and project layout reviewed and approved by the NJDEP will be the basis of the design (copies attached).



Re: **Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach**

3. Design of the Seawall will be in accordance with the U.S. Army Corps of Engineers Manual "EM 1110-2-1614, Design of Coastal Revetments, Seawalls, and Bulkheads", published June 30, 1995.
4. Prior to initiation as part of the design process, T&M will coordinate with the NJDEP and the Borough of Monmouth Beach to obtain all existing plans, inspection reports, studies, filed maps, environmental impact documents, survey monumentation and other pertinent information for review. T&M will review the relevant documents available. We understand that information required for the replacement of the seawall that is not included within these documents will need to be field verified and incorporated into the design.
5. The project will be developed in accordance with "Municipal Requirements for all Specifications, Drawings & Survey Data submitted to State of N.J. - Bureau of Coastal Engineering (NJDEP-BCE)". A copy of those requirements is attached.
6. The required Alternatives Analysis for the project as listed under "Additional Engineer and Design Information" of the NJBEP-BCE requirements document will be provided by the NJDEP.
7. Topographic Survey –Topographic survey for the Monmouth Beach Gap – Section 11A to be performed by T&M's sub consultant GEOD. Survey will be performed for final design and construction at this time. Accuracy is to be in accordance with standards for 1"=20' plans with 1' contours. T&M will define the extent of survey required. The survey will include:
 - a. Baseline ties to the USACOE Baseline.
 - b. All planimetric features within the bandwidth including, but not limited to, curblines with top and bottom of curb elevations, edges of pavement, etc.
 - c. Drainage structures with pipe sizes and inverts.
 - d. Utility markouts and visible utility infrastructure (overhead and underground). T&M will request markouts of utilities within the project area.
 - e. Right-of-way and property monumentation.
 - f. Buildings, staircases over seawall and other structures.
8. Base Map Development – T&M will provide the base mapping for the project in AutoCad Version 13 format for use with Civil 3D. Property lines at this time will be based on GIS/Tax Map data.
9. All NJDEP, USACOE permits required for this project will be acquired by the NJDEP. It is anticipated that these will be NJDEP CAFRA and Waterfront Development Permits. Permit Plans were completed and delivered for the project under a prior authorization.



**Re: Proposal for Survey, Engineering Design, and Construction Services
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Borough of Monmouth Beach**

No further work is required, any additional permit work will be considered extra work. Under a separate authorization, T&M Associates obtained, on behalf of the Borough, a CAFRA permit for the proposed deck improvement west of the seawall (not subject of this proposal) and the landings and stairs to the east of the seawall (that will be included in this project)

As per the NJDEP, T&M understands that SESC certification from the FSCD is not required. Should it be determined to be required it will be considered extra work and we will provide a proposal to complete the task.

10. The new seawall and ancillary facilities will be designed in accordance with the New Jersey Uniform Construction Code and appropriate subcodes.
11. The proposed gravel parking area will be designed in accordance with NJDEP requirements.
12. T&M Associates will coordinate with NFWF regarding the relocation/replacement of the dune plantings. T&M will have a landscape architect develop a planting plan for the replacement and/or relocation. The scope of effort for this will include one concept meeting with Monmouth Beach, NFWF and NJDEP, preliminary planting plan submitted with the preliminary plans (1 sheet) and based on comments received a final plan and plant list for inclusion in the contract specifications. Any new permits or modifications to existing permits for the planting effort will be the responsibility of the NJDEP.
13. T&M's subcontractor, CB&I has provided a wave analysis, scour depth analysis, stone sizing and conceptual cross-section for use in the sea wall design. This work has been completed under a prior authorization and any additional work will be considered extra work.
14. Geotechnical. Geotechnical Investigations and Reports were performed by T&M sub consultants AMERCOM (Geotechnical) and Granese Drilling (borings and piezometer installation). This work has been completed under a prior authorization and any additional work will be considered extra work.

13. Structural Report

T&M anticipates that the conceptual details reviewed and approved by the NJDEP will be the basis of the design. Upon receipt of the pertinent data and recommended cross-sections from our subconsultant CB&I, T&M will perform verification calculations to confirm the details as developed are appropriate for the design. If required the details will be modified accordingly. The NJDEP will provide T&M with the pertinent studies for review and verification. A condition of the NJDEP for this project is that existing stone



**Re: Proposal for Survey, Engineering Design, and Construction Services
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removed as part of demolition is to remain onsite and be reused in the repair and reconstruction of the seawall. It is envisioned that no stone is to be exported off-site. This condition will be a mandatory parameter in our design.

14. Utilities

- a. Completed base maps will be provided to the utilities that service the area identifying the utilities found in the surveyed project area and requesting verification. In addition plans for utility expansion will be requested.
- b. T&M will obtain the names of the owners of the utilities that traverse the project limits and will notify them of the project. We will coordinate with the utility owner(s) to obtain the as-built documents for the location of all underground and above ground utilities. We will locate the surveyed and as-built utility facilities on the base mapping and send it to the utility companies for verification. We will identify conflicts with proposed improvements. In concert with the utility companies, T&M will develop a permanent relocation scheme of utilities within the project area if required and submit it to the NJDEP and Boroughs of Sea Bright and Monmouth Beach for approval. Whenever possible, the design will be modified appropriately to avoid utility relocation. If test pits are required, the utility companies will be requested to dig them. If T&M is required to contract for these test pits, it will be considered extra work.
- c. We will attend three (3) utility coordination meetings with the affected utility companies (gas, water, sewer, cable, telephone and electric) to discuss potential conflicts and accommodations of existing utilities.
- d. We have assumed that design and/or detailing of temporary and permanent facilities will be provided by their respective owners. The temporary and/or permanent relocations will be included in the construction documents.

15. Right-of-Way

- a. The Borough of Monmouth Beach will acquire any property and easements required for the repair and reconstruction of the seawall.
- b. GIS based Tax Map level property lines will be plotted on the preliminary plans to show the anticipated property impacts.
- c. The establishment of property boundaries, preparation of general property parcel maps, individual property parcel maps, deed descriptions or other legal documents required for property acquisition or easements are excluded from this contract. A cost for these services can be provided if needed.



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Borough of Monmouth Beach**

16. T&M will prepare construction contract documents and submit them for review and acceptance by NJDEP and the Boroughs of Sea Bright and Monmouth Beach. The construction plans will be prepared on media for reproduction in accordance with standard State practices. Structural drawings will be prepared in accordance with the 2009 NJDOT Design Manual for Bridges and Structures and subsequent revisions and supplemented by applicable ACOE standards. Roadway plans will be prepared in accordance with the 2013 NJDOT Design Manual - Roadway and subsequent revisions. The plans will be prepared using the English system. Final construction plans will be prepared in AutoCAD and signed and sealed and provided on 24" x 36" bond paper. Quantities will be estimated by item, and a final engineer's construction cost estimate will be prepared. Specifications will be prepared by the NJDEP.

It is anticipated that the Construction plans for the Seawall will be developed at 1"=30' for the sections involving the demolition and reconstruction or construction of the seawall (Sections 1-6, 8 10, 12 and 11A-the Monmouth Beach Gap) along with cross-sections at intervals to provide the appropriate detail for design and construction. For the repair sections utilizing "concrete bag" plus shoulder grouting under an "if and where" construction basis, general location plans at 1"=100' will be provided with typical sections (Sections 7, 9 and 11).

17. Meetings – During the design phase T&M will prepare and attend the following meetings:
- a. NJDEP Project Kick-off Meeting
 - b. Project Coordination Meetings with NJDEP
 - c. Utility Coordination

Detailed Engineering Scope of Work –

Once complete base mapping is received from the NJDEP, T&M will begin with developing the preliminary design of the Seawall repair and reconstruction; and ancillary structures.

- a) **Preliminary Submission**
 - i) Preliminary Plans
 - Title Sheet
 - Typical Sections
 - Construction Plan Sheets showing: areas of seawall repair or reconstruction; site improvements to mitigate for seawall reconstruction and repair, i.e., loss of spaces in parking lot
 - Preliminary Landscaping Plan for NFWF planting relocation
 - Cross-Sections in areas of new seawall or significant reconstruction
 - Structural Plans



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Seawall GP&E
Stair and Ramp GP&E's
Vehicle Access Point GP&E
Preliminary Details

Five (5) Copies of preliminary plans, geotechnical report and structural report and engineer's estimate will be provided to the NJDEP for circulation and review.

Upon written approval of the preliminary design from the Boroughs and NJDEP, T&M will proceed with finalizing the design.

b) Final Submission

- i) Plans
 - Title Sheet
 - Estimate and Distribution of Quantities
 - Notes
 - Project Layout (ties, boring locations, plan sheet index, method of x-sections)
 - Typical Sections
 - Construction Plan Sheets
 - Landscaping Plan for NFWF planting relocation
 - Cross-Sections – Seawall Construction Reconstruction areas
 - Structural Plans and details
 - Seawall Repair and Reconstruction
 - Gravel Parking Area
 - Landings, Stairs and Ramps
 - Vehicle Cross-Over Facilities
 - Construction Staging
 - Miscellaneous Details
- ii) Construction Cost Estimate
- iii) Final Design Report

The final submission will consist of:

- i) 1 Full size set of signed and sealed contract drawings by a NJ Licensed Professional Engineer.
- ii) 1 Copy of the final construction cost estimate.
- iii) 1 Copy of signed and sealed final design report including calculations, quantities and supporting data by a NJ Licensed Professional Engineer.
- iv) 1 Copy of electronic files (AutoCAD dwg. and dwf format) on CD.
- v) 2 Copies of electronic files standard specifications and any non-standard specifications on CD.
- vi) Specific Quality Control/Quality Assurance Program.
- vii) (25) bound copies of final plans and Special Provisions.



Re: Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach

Construction Engineering Services

The NJDEP will be responsible for providing all Construction Administration and Inspection services. T&M will provide a part time Project Manager and a part-time Engineer with additional support services from our office staff, as directed by the NJDEP. The following is a description of the Construction services we will provide. The anticipated performance period for these services in Monmouth Beach is 8 hours/week for 26 weeks (6 months). T&M designers will provide construction engineering support services for the review of shop drawings, construction materials, reply to RFI's and other contractor submittals and field meetings if requested.

1. Attend a pre-construction meeting with the project participants. Review initial project submittals including baseline project schedule, schedule of values, insurance certificates, SA-11 form, etc.
2. Attend bi-weekly construction meetings for duration of construction (18 months).
3. T&M designers will go out in the field to assist NJDEP for design support. In addition, we have hours allotted for office support, shop drawing review and RFIs.
4. Review submittals received from the contractor including contractor's schedules, shop drawings, product data and samples and material certifications for general conformance with Contract Documents.
5. Respond to Contract Document interpretation requests and other requests for information from the Contractor and assist in resolution of questions and/or disputes.
6. Perform final site reconnaissance and prepare a list of corrective action items.

The NJDEP will be entering into a State Aid Agreement with the Borough to cover the survey, geotechnical, and engineering costs incurred by the Borough in accordance with the FEMA PW for this project. The total fee for the Monmouth Beach of this project is as follows (it should be noted that GEOD, SESI, CBI and Granese will be sub-consultants to T&M):

Survey and Base Mapping (performed by sub-consultant GEOD)	\$ 23,866**
Geotechnical Report (performed by sub-consultant SESI)	\$ 5,000 **
Soil Borings and Piezometers (performed by sub-consultant Granese)	\$ 2,000**
Technical Wave Analysis (performed by sub-consultant CB&I)	\$ 6,255**
Conceptual Design (completed over the last year)	\$ 27,000**
Engineering and Design (~3 Months)	\$277,197***
Construction Phase Design Support (~18 Months)	\$54,798
TOTAL	\$358,995.00

** Previously Authorized Under Separate Proposal

*** Permit Plan (\$7,164) Previously Authorized Under Separate Proposal



MBCH-01630
June 8, 2016
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**Re: Proposal for Survey, Engineering Design, and Construction Services
Seawall Construction, Repair and Reconstruction
Borough of Monmouth Beach**

Once authorized and the State Aid Agreement is executed, we anticipated that the work in both towns will take approximately 3 months for design and approximately 18 months for the construction phase. On behalf of the firm, I would like to thank you for the opportunity to submit this proposal. If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

T&M ASSOCIATES


FRANCIS W. MULLAN, PE
SENIOR VICE PRESIDENT


BONNIE L. HEARD, P.E., C.M.E.
SUPERVISING ENGINEER

BLH:EST:ikc
Enclosures

c: Judy Wilson, Monmouth Beach Administrator
Joyce Escalante, Borough Clerk
Dennis Collins, Monmouth Beach Borough Attorney

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APPENDIX B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Land Use Regulation

Mail Code 501-02A

P.O. Box 420

Trenton, New Jersey 08625-0420

www.state.nj.us/dep/landuse

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

William Dixon, Manager
NJDEP Bureau of Coastal Engineering
1510 Hooper Avenue
Toms River, NJ 08753

NOV 02 2015

Rob Lore
Environmental and Historic Advisor
FEMA - 4086 - DR-NJ
260 Industrial Way West
Eatontown, NJ 07724

Re: Federal Consistency Determination for the Seawall Repair in the Borough of Sea Bright and Monmouth Beach
DLUR File No. 1300-15-0005.1. CDT150001

Dear Mr. Dixon and Mr. Lore:

The New Jersey Department of Environmental Protection, Division of Land Use Regulation, acting under Section 307 of the Federal Coastal Management Act (P.L. 92-583) as amended, finds FEMA and the NJDEP Bureau of Coastal Engineering's (BCE) proposed seawall repair and construction in the Borough of Sea Bright and Monmouth Beach, Monmouth County, consistent with the approved New Jersey Coastal Management Program.

The BCE office is proposing to repair areas of the damaged seawall as needed and install approximately 1,077 linear feet of new seawall in three areas, in order to close up gaps between the existing seawall.

The seawall repairs include reconstruction of sections of the existing seawall within the existing footprint by resetting the stone, adding larger cap stone, increasing the elevation to +18.0 ft. NAVD 88 and will include a stone toe protection to a maximum of -14.8 ft. NAVD 88, with a waterward slope of 15:1. In addition, several areas will be reinforced with concrete bags and grout filler as needed.

The new seawall sections will be constructed to a maximum elevation of +18.0 ft. NAVD 88 and will include a stone toe protection to a maximum of -14.8 ft. NAVD 88, with a waterward slope of 15:1. The first area of 424 linear feet of new seawall is located in front the Borough's proposed comfort station and public parking area in the Borough of Sea Bright. This section also includes a vehicle crossover and a public access walkover. The second area of 20 linear feet of new seawall is located within the Tradewinds residential development, in the Borough of Sea Bright. An existing wooden bulkhead will be removed at this location, and a new core stone and cap stone will be placed in order to tie into the adjacent seawall. The third location is

approximately 633 linear feet in the Borough of Monmouth Beach. The new seawall will be constructed in a straight line, beginning at the northern end of the municipal parking lot, extending in front of the bathing pavilion, tying into the existing seawall to the south. This section also includes a vehicle crossover and reconstruction of existing public access ramps.

This work is shown on 17 sheets entitled:

“STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF ENGINEERING & CONSTRUCTION BUREAU OF COASTAL
ENGINEERING SEA BRIGHT & MONMOUTH BEACH SEAWALL REPAIR &
CONSTRUCTION BOROUGH OF SEA BRIGHT & BOROUGH OF MONMOUTH
BEACH COUNTY OF MONMOUTH”, all sheets dated August 2015, unrevised and
prepared by T & M Associates.

To ensure consistency with the New Jersey Coastal Management Program, the following conditions must be met:

1. All staging areas must be returned to the pre-existing condition within 60 days of completion of the project.
2. This determination only authorizes work on parcels for which the property owner has authorized this work on their properties. Work on any other properties will require additional permits and approval from the appropriate property owners.
3. The permittee(s) shall adhere to the Sea Bright Borough Federal Beach Management Plan for the Protection of Federally and State-Listed Species (June 2006) and the Borough of Monmouth Beach Federal Beach Management Plan for the Protection of Federally and State-Listed Species (April 2008).
4. The permittee shall coordinate points of beach access and staging areas with the US Fish & Wildlife Service (USFWS), New Jersey Field Office (“USFWS-NJFO”); ensuring the areas are located outside of areas known habitat for species of concern.
5. In order to protect habitat for State and Federally listed beach nesting birds, the permittee:
 - a. Shall adhere to a seasonal restriction on all work, for all work locations, as well as any staging of work areas, from March 15th through August 31st of each calendar year; and,
 - b. Shall notify the NJ Division of Fish & Wildlife Endangered & Nongame Species Program (“ENSP”) as work in each of the project locations is concluding in order for ENSP staff to inspect and assess the work locations for unexpected habitat changes or other problems that need correction. The permittee is responsible for assuming all liability for any corrective work necessary to repair injury to beach-nesting bird habitat.
6. For work proposed to take place at any point during the Seabeach Amaranth growing season, which runs from May 15th through November 30th, the permittee must implement appropriate survey, monitoring and coordination efforts with the USFWS-NJFO:

- a. A qualified biologist shall conduct a survey of the project area a maximum of one week prior to the initiation of construction, but no earlier than May 1st, in order to document the presence or absence of seabeach amaranth. The survey shall be conducted by walking slowly and carefully in a zig-zag fashion from the high-water line (seaward limit of vegetation) to the dune, seawall, boardwalk, or other landward limit of the beach, ensuring complete survey coverage of the area of disturbance. (Note: Seedlings may be small and inconspicuous. The biologist may refer to the USFWS-NJFO collection of Amaranth photos found at "<http://www.fws.gov/northeast/njfieldoffice/endangered/amaranth.html#photos>".)
 - b. In the event that Seabeach Amaranth is observed, information including locations, number and size of plants shall be recorded and promptly provided to the USFWS-NJFO, Division of Land Use Regulation Endangered & Threatened Species Unit and to the New Jersey Natural Heritage Program.
 - c. In order to protect and avoid disturbance to all Seabeach Amaranth locations, symbolic fencing (i.e., post and string only; NEVER snow fence), marked with flagging and signs, shall be installed around each occurrence; providing a 10-foot buffer around all sides of the plant(s).
 - d. All construction activities shall avoid any delineated locations of Seabeach Amaranth and no materials or equipment shall be stockpiled or stored within 100 meters of known seabeach amaranth sites. All work crews shall be instructed to avoid fenced areas (i.e., do not enter on foot or via motor vehicle; do not stage or store materials or equipment in or near fencing; locate access routes away from fenced area; do not grade sand in or near fencing; etc.).
 - e. Symbolic fencing shall be removed upon completion of work.
 - f. For project initiated prior to May 1st but continuing into the Seabeach Amaranth growing season, the survey shall be conducted in areas not yet constructed as of May 1st.
7. Consistent with Assembly Bill, No. 2804, P.L. 2007, CHAPTER 113 the use of creosote treated material (or other descriptive term from the law) in the construction of the authorized structure(s) is prohibited.
 8. This permit does not obviate you from obtaining any other necessary federal, state or local approvals.
 9. This permit does not authorize dredging activities.
 10. All excavated material shall be disposed of in a lawful manner. For example, it should be placed outside of any flood hazard area, riparian zone, regulated water, freshwater wetland and adjacent transition area, and in such a way as to not interfere with the positive drainage of the receiving area.
 11. The seawall must be constructed to withstand displacement, overturning, and failure due to undermining and/or pressure from soil, water and frost.

12. Public access to the waterfront and along the beach must be maintained during and after project construction.

This Federal Consistency is authorized pursuant to all parties following the guidelines set forth, and agreed upon, for the proposed work.

Pursuant to 15 CFR 930.44, the Division reserves the right to object and request remedial action if this proposal is conducted in a manner, or is having an effect on, the coastal zone that is substantially different than originally proposed.

Thank you for your attention to and cooperation with New Jersey's Coastal Zone Management Program. If you have any questions with regard to this determination, please do not hesitate to contact Kara Turner, at the above address or at 609-633-2289.

Sincerely,



Colleen Keller
Manager
Bureau of Coastal Regulation

Cc: Elizabeth Semple, Division of Coastal and Land Use Planning

APPENDIX C

BLOCK	LOT
1	1
1	2
1	3
1	4
1	5
1	5.01
1	6
1	7
1	8
1	9
1	10
1	11
1	11.01
1	12
1	13
1	14
1	15
16	1
16	2
16	2.02
16	2.03
16	3
16	4
16	5
16	6
16	7
16	8
16	9
16	10
16	11
16	12
16	13
16	14
16	15
16	16
16	17
16	18
22	1
48	10
50	1.01
50	3.01
50	4.01
50	5
50	5.01
50	6
50	6.01
50	7
50	7.01
50	8.01
50	8.02
50	8.03
50	9
50	9.01

BLOCK	LOT
50	10
50	10.01
50	11
Valentine Drive	
NJDOT Rte 36 ROW	

Appendix 9

**A RESOLUTION OF THE BOROUGH OF MONMOUTH BEACH ACCEPTING A
SEAWALL STAIRCASE**

WHEREAS, access to the Atlantic Ocean by the public is provided to the general public by the existing access points located in the Borough of Monmouth Beach; and

WHEREAS, the Borough of Monmouth Beach desired to increase such public access by permitting construction of access ways across the existing seawall; and

WHEREAS, the Borough of Monmouth Beach promulgated rules governing approval for the construction of such access ways (Commonly known as "Seawall Staircases"); and

WHEREAS, the Borough of Monmouth Beach deemed it in the interests of the Public's health, safety and welfare to permit the private construction of "Seawall Staircases" provided those structures are dedicated to the Borough following construction; and

WHEREAS, Francis E. Schiller and Paul T. Jordan (DONORS) have caused the construction of a seawall staircase in the Right Of Way of Cottage Road (Cottage Road Seawall Staircase) in accord with all the conditions of the Ordinance entitled SEAWALL STAIRCASES; and

WHEREAS, the seawall staircase was constructed in accord with the plans approved by the Zoning Official and Construction Official of the Borough; and

WHEREAS, the construction has been fully paid for by the Donors; and

WHEREAS, the Donors are desirous of dedicating the Cottage Road Seawall Staircase to the Borough of Monmouth Beach pursuant to NJSA 40A:5-29 et seq. and

WHEREAS, the Borough ordained that the staircase, so constructed, shall become the property of the Borough of Monmouth Beach and shall constitute a public access point.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Monmouth Beach, in the County of Monmouth and State of New Jersey pursuant to NJSA 40A:5-29 et seq. accepts the dedication of the Cottage Road Seawall Staircase under the following conditions:

1. The Cottage Road Seawall Staircase is acknowledged and accepted as a gift to the Borough from the Donors.
2. The Borough shall maintain the staircase as a perpetual public access point in perpetuum, for use by the general public, regardless of residency.
3. Donors shall not have any future rights, interest or ownership in the Cottage Road Seawall Staircase; which is the exclusive property of the Borough of Monmouth Beach maintained for the public good.

AND IT IS FURTHER RESOLVED : If any provision of this Resolution or the application of such provision to any person or circumstances is declared invalid, such invalidity shall not affect the other provisions or applications of this Resolution which can be given effect, and to this end, the provisions of this Resolution are declared to be severable.

AND IT IS FURTHER RESOLVED : This Resolution shall take effect upon its passage, approval and publication according to law.

Introduced : July 10, 2007
Passed & Approved : July 10, 2007

I, Joyce L. Escalante, RMC, Municipal Clerk of the Borough of Monmouth Beach, do hereby certify this to be a true copy of a Resolution adopted by the Board of Commissioners of the Borough of Monmouth Beach at a meeting held on July 10, 2007.

ATTEST:



Joyce L. Escalante, RMC
Municipal Clerk