
Township of Upper **Municipal Public Access Plan**

Submitted by: Township of Upper

Date of Current Submittal: 3/11/2020

Approved by the New Jersey Department of Environmental Protection:
Date of NJDEP approval

Adoption by the Township Planning Board:
Date will be added upon adoption

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March 11, 2020

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Introduction

This document is intended to provide a comprehensive public access plan for the Township of Upper 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 (NJDEP) encourages municipalities to develop and adopt MPAPs to govern public access within their Township. 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 NJDEP, Planning Board, Strathmere Improvement Association, Citizens for Strathmere & Whale Beach, Green Team and presented to the Planning Board on 10/17/2019, 12/19/19 and approved for submission to the NJDEP on 2/20/2020. Upon receiving approval from the NJDEP on **date**, the MPAP was incorporated into the Recreation Element of the Master Plan by resolution on 2/20/2020, (see Appendix 1). All public access decisions made within Township of Upper 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 Township of Upper 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.

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

I. Municipal Public Access Vision

A. Overview of Township of Upper

The Township of Upper is located in the northern part of Cape May County and encompasses approximately 68 square miles. Upper Township is primarily a residential community with distinct single-family neighborhoods. The neighborhoods of Beesley's Point, Marmora, Palermo, Seaville and Greenfield are along the US Rt-9/ Stagecoach Road corridor, the neighborhoods of Petersburg, Tuckahoe, Marshallville & Steelmantown are to the west and is separated by the Cedar Swamp Creek and its associated wetlands. The barrier island community of Strathmere and Whale Beach is physically separated from the mainland community by marshland and tidal lands. The Township is bordered by the Cape May County municipalities of Dennis Township, Woodbine, Township of Upper and Sea Isle City; the Atlantic County municipalities of Corbin City and Estell Manor; and the Cumberland County municipality of Maurice River Township.

The 2010 Census determined a population for Upper Township is 12,373.

The major tidal waterways that are within Upper Township include the Atlantic Ocean, Strathmere Bay, Corson's Inlet, Crook Horn Creek, Great Egg Harbor Bay, Tuckahoe River, Cedar Swamp Creek and Mill Creek. There are no major freshwater water-ways in Upper Township. Over 48 percent of the land area of Upper Township consists of tidal and freshwater wetlands. Over 46 percent of the land area is publicly owned by either the State, Federal, County or Township.

1. Map 1. Township of Upper Tidal Waterways and Lands

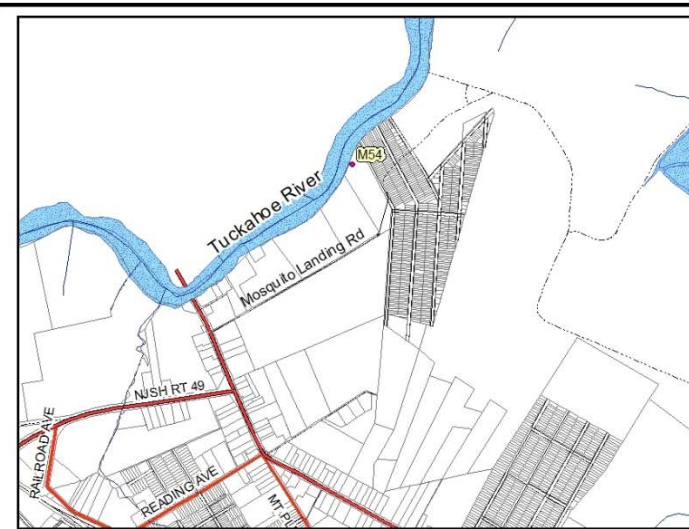
Map 1 shows all the tidal waterways within the Township of Upper and all lands held by the Township of Upper.

Township of Upper Public Access Plan

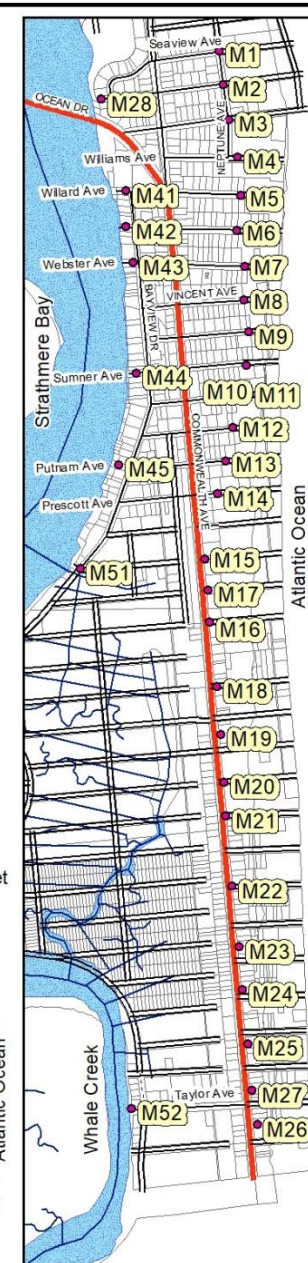
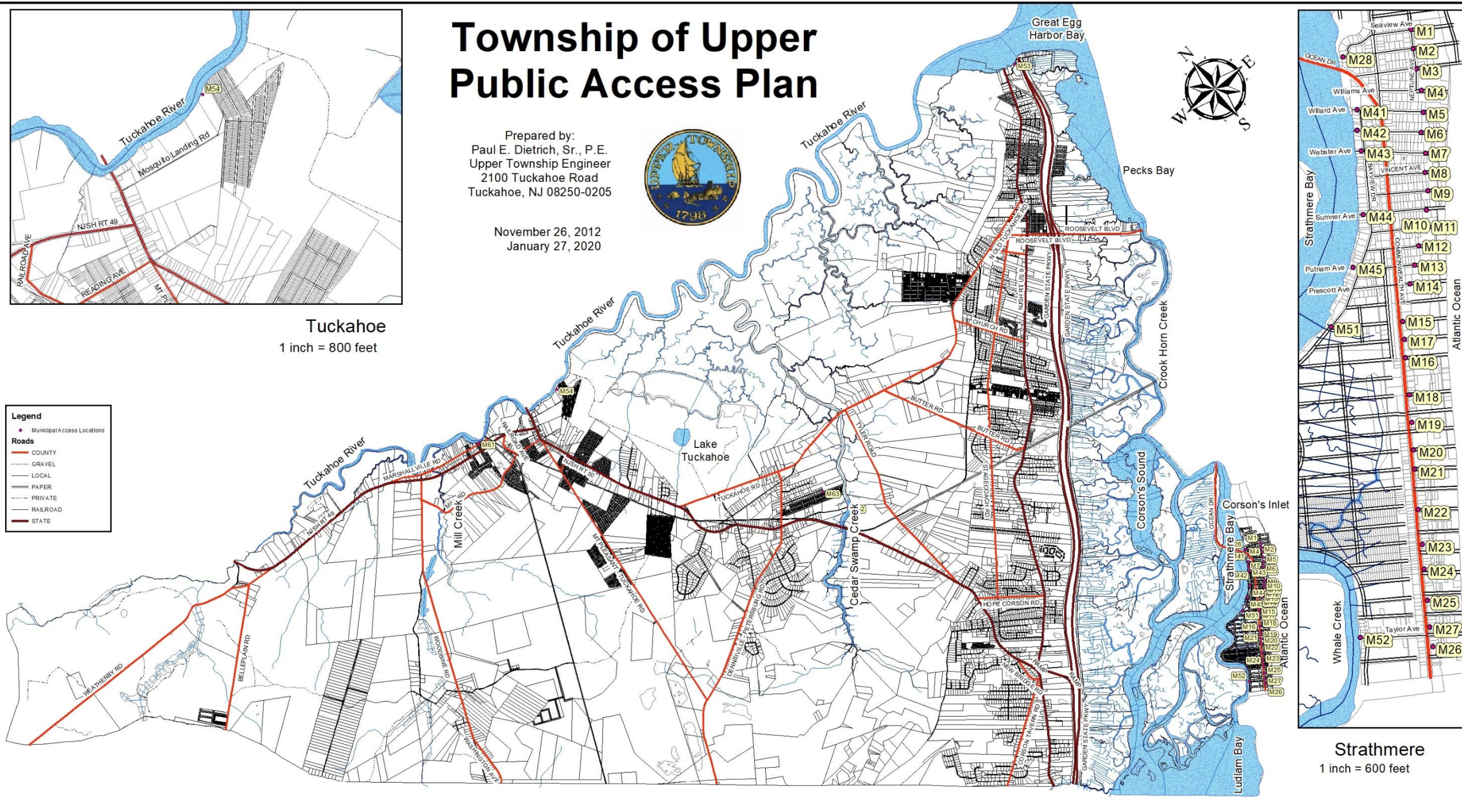
Prepared by:
Paul E. Dietrich, Sr., P.E.
Upper Township Engineer
2100 Tuckahoe Road
Tuckahoe, NJ 08250-0205



November 26, 2012
January 27, 2020



Tuckahoe
1 inch = 800 feet



Strathmere
1 inch = 600 feet

Map 1: Township of Upper Tidal Waterways and Lands and access points

B. Municipal Public Access Goals and Objectives

1. Goals & Objectives

The goal of the Township of Upper Municipal Public Access Plan and the administrative mechanisms that are in place, or shall be put in place by Upper Township, is to ensure that the Township of Upper will provide permanently protected access to the water and, water-dependent and water-oriented activities along all of the tidal waters and their shores within its municipal boundaries in accordance with the Public Trust Doctrine and NJDEP's Coastal Zone Management rules. In pursuit of this goal Upper Township proposes the following:

- i. Upper Township will maintain an accessible waterfront for the enjoyment of its residents and seasonal visitors;
- ii. Upper Township will seek to maintain, enhance, and create public opportunities for access to tidal waters and their shores, on a non-discriminatory basis, for recreation and commerce;
- iii. Upper Township will strive to improve public waterfront areas and recreational facilities with additional water-dependent or water-oriented amenities; and
- iv. Upper Township will ensure that new development in Upper Township shall provide opportunity for public access to tidal waters and their shores on site, or in coordination with this Municipal Public Access Plan.

In addition to those goals outlined within this Plan, Township of Upper affirms the following State required goals specifically for public access:

- v. Maintain all existing public access to the maximum extent practicable;
- vi. Maintain safe and adequate access locations for fishing in those areas where fishing is safe and appropriate; and
- vii. Provide clear informative signage for access locations.

Upper Township'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 Township of Upper. 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

This MPAP is consistent with the Township's Master Plan Land Use Element and the Open Space and Recreation Element.

In accordance with N.J.A.C. 7:7-16.9, this Municipal Public Access Plan shall be reviewed and approved by the Township of Upper Planning Board for its consistency with the Township of Upper Master Plan. Upon approval by the NJDEP, the MPAP shall be incorporated by resolution into the Township of Upper's Master Plan.

II. Public Access

Public Access in Township of Upper is provided by the municipality and consists of a variety of access points and facilities discussed below and include boat ramps, lifeguarded beaches, unguarded beaches and public access points.

A. Public Access Locations

Map 1 Township of Upper Public Access Locations, identifies an inventory of all public access locations within Township of Upper, whether they are currently Utilized (facility that has physical improvements is maintained by an authorized organization), Un-utilized (facility that has no physical improvements, or Restricted to the public (facility that may have restrictions on access or use), along with their attributes of improvements and activities. Not all the locations are maintained or controlled by Upper Township.

All public access locations which access the Atlantic Ocean have appropriate signage. The Township has no public parking lots available along the Atlantic Ocean and there is no Township property available. There is free street parking available throughout Strathmere and Whale Beach for approximately 800 cars. There is a 200 car parking area that Cape May County operates at 4th Street in Sea Isle City just South of Whale Beach.

The Beesley's Point Park is currently proposed for renovation in 2020 and will have 50 car parking spaces and 7 boat parking spaces.

See Table located in the Appendix 2, for detailed information for each location.

B. Limitations to Public Access

Township of Upper is fortunate to have a multitude of available access to the Atlantic Ocean, Tuckahoe River and tributaries and bayside shorelines. Public access to the edge of tidally flowed waters in Township of Upper may be restricted both in part (seasonally or hourly) or in full, where in the judgment of municipal officials, use will create conditions that may be reasonably expected to endanger the health or safety of the public or environment or create a significant security vulnerability, consistent with federal law. Public access to the edge of Township of Upper's tidally flowed waters may be prohibited in locations where it is inconsistent with federal law or where it is not practicable based on the risk of injury from hazardous operations or substantial permanent obstructions, and no measures can be taken to avert these risks.

As documented herein, numerous street ends provide visual access along the back bay. Public docks providing access for nature viewing, fishing, crabbing, and launch facilities for boats, kayaks and canoes are limited to three locations. The lack of off-street parking necessary to support additional watercraft launch locations on the back bay is a significant impediment to further development of these facilities.

Access to public restrooms immediately adjacent to its shoreline is particularly limited due to lack of a public sewer system. Public port-a-potties are provided by the Township at four (4) locations adjacent to the Atlantic Ocean beachfront (as listed in Appendix 2) and one (1) at the Beesley's Pt Park. The addition of new public restroom facilities adjacent to the shoreline is generally limited by a lack of available locations on public land and public sewer.

Surfing:

When lifeguards are on duty surfing is limited to the area between Sherman Ave and Vincent Ave. When lifeguards are off duty, surfers are free to enter the water at their own risk.

Fishing:

When lifeguards are on duty, for swimmer safety, fishing is restricted and at the direction of the lifeguards on duty.

Dogs:

Dogs are not permitted on the Strathmere beach from March 15 to August 31 in accordance with the Township's approved Beach Management Plan.

III. Community Needs Assessment

Township of Upper has performed a community needs assessment consisted of the following:

- Township Planning Board held a public meeting on October 17, 2019 to discuss the MPAP and the future public waterway access needs of the community.
- Township also distributed the DRAFT MPAP to numerous community organizations to engage discussion and receive input on the MPAP.

Comments received from the public included the following items:

- Modification of the existing access locations to the Beach and Bay in Strathmere including new access mats and conversion of timber crossover structures to at grade crossovers.
- Seating area & enhancements for public viewing at access locations to the Beach and Bay in Strathmere
- There was mixed input from the public regarding adding a fishing pier along Strathmere Bay. This issue should be studied further in the future with a greater public outreach to be done in the future.

Upper Township is fortunate to have enough readily available public access to the Atlantic Ocean, Tuckahoe River and back bay waters for both its year-round residents and its annual summer population. Upper Township recognizes the need to continue to improve and maintain its existing public access points and amenities along its waterfront areas.

IV. Implementation Plan

Township of Upper 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

Township of Upper developed the following priorities:

1. Maintain Existing Public Access

Upper Township shall maintain the existing Township public access locations as shown on Map 1 and described in Appendix 2. The Township shall continue to fund routine maintenance of our existing public access locations through the local budget process.

2. Preserving Public Access

Upper Township will continue to maintain and improve, as recommended herein, all improved public access to waterways including appropriate signage along the public beaches in Strathmere and Whale Beach. Public Access locations have been preserved by Deed of Dedication (Appendix 3).

Improvements to unimproved public access to waterways will be sensitive to the capacity of these areas to accommodate anticipated intensity of use.

Where found applicable, proposed improvements to all public access to waterways points will be consistent with the requirements for protection of shore areas, as promulgated by the United States Army Corps of Engineers.

3. Proposed Locations and Facilities

Upper Township shall look to enhancing public access at the following locations:

- Upper Township shall look to develop further public input on future opportunities for fishing locations along Strathmere Bay;
- Upgrading boat ramp facilities at Beesley's Pt Park;
- Provide additional accessible access mats to beach crossovers in Strathmere and Whale Beach;
- Modification of the existing access locations to the Beach and Bay in Strathmere including new access mats and conversion of timber crossover structures to at grade crossovers.
- Enhance seating & areas for public viewing at access locations to the Beach and Bay in Strathmere and Whale Beach.

B. Signage

Township of Upper has provided the following signage at all Atlantic Ocean beach access locations along Strathmere & Whale Beach beaches since 2012. Signage was installed in 2012 and will continue to be maintained as necessary. Public Works Department inspects the signage every two weeks between May and October.

PUBLIC BEACH ACCESS

Accessible beach entrances at
Williams & Prescott Ave.'s

For emergency contact
you are at beach crossover:
“see list below”

C. United States Army Corps of Engineers Requirements for Shore Protection Projects

Township of Upper has met the USACE Requirements by providing perpetual easements and/or actual municipal ownership of the Public Beach area in Strathmere and Whale Beach. The USACE performed the initial shore protection project in 2016. The first re-nourishment was completed in November & December of 2019 included over 510,000 CY of sand and dune reconstruction and was partially funded with Municipal Funds.

D. Additional Steps

Township of Upper has taken additional steps to implement the MPAP including maintaining a General Permit with the NJDEP for Beach and Dune Maintenance and coordinating with the United States Fish and Wildlife Service and NJDEP in developing and maintaining a Beach Management Plan which as last updated in 2019.

V. Resolution of Incorporation

Township of Upper Planning Board has approved a resolution for the incorporation of the MPAP. See Appendix 1 for the resolution.

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

**UPPER TOWNSHIP PLANNING BOARD
CAPE MAY COUNTY
SPECIAL RESOLUTION 02-2020
ADOPTION OF UPPER TOWNSHIP MUNICIPAL PUBLIC
ACCESS PLAN**

WHEREAS, pursuant to the guidance of the New Jersey Department of Environmental Protection, Upper Township has prepared a Municipal Public Access Plan (MPAP), and

WHEREAS, the Upper Township Municipal Public Access Plan was presented by the Township Engineer to the Planning Board at the October 17, 2019 and February 20, 2019 meetings, and

WHEREAS, The Planning Board discussed the plan and received public comment; and

WHEREAS, it is recommended that the MPAP be incorporated into the Master Plan Reexamination Report as part of the Recreation Element, and

NOW, THEREFORE, BE IT RESOLVED by the Board that the attached Upper Township Municipal Public Access Plan (MPAP) dated January 27, 2020 is hereby adopted by the Board is recommended to be an amendment of the Recreation Element of the Master Plan;

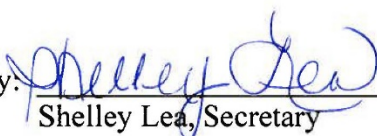
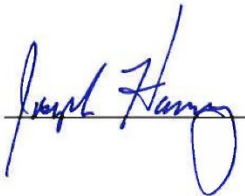
NOW, THEREFORE, BE IT FURTHER RESOLVED and the Board directs that a copy of this Resolution and the MPAP be forwarded to the Upper Township Committee, Cape May County Planning Board, NJ Department of Environmental Protection, and Township Clerk for their respective information and review.

ROLL CALL VOTE

Moved: Kingston
 Seconded: McCrosson

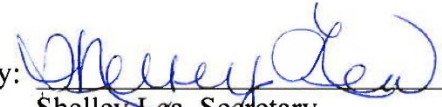
MEMBER	YEA	NAY	ABSENT	ABSTAIN	EXCUSED
Palombo Mayor-Class I	X				
Reeves Class II	X				
Young, H – Class III	X				
Class IV:					
Costello	X				
Endicott			X		
Harney	X				
Kingston	X				
McCrosson	X				
Riordan			X		
Young, R Alt #1	X				
Klebaur.-Alt #2	X				

AND BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the applicant and to all who request a copy for a reasonable fee. In addition, a copy of this Resolution shall be filed in the Office of the Clerk of the Township of Upper.

By:  Shelley Lea, Secretary
 By:  2/20/2020

Dated: February 20, 2020

The foregoing is a true copy of a Resolution adopted by the Planning Board at a meeting of February 20, 2020.

By: 
 Shelley Lea, Secretary

**Appendix 2
Public Access Table**

ID	Signs	Parking	Location	Cross Street	Badge	Swim	Fishing	Surfing	Playgrd	Park	Pier	Boat Launch	Marina	Restroom	H/C	Shore-Line	Access Type
M 1	Yes	street	Seaview Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 2	Yes	street	Seacliff Road	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 3	Yes	street	Winthrop Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 4	Yes	street	Williams Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	yes	yes	Ocean	Vehicle & Pedestrian access, Handicap, Port-a-Potty
M 5	Yes	street	Willard Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 6	Yes	street	Whittier Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 7	Yes	street	Webster Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 8	Yes	street	Vincent Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 9	Yes	street	Tecumseh Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 10	Yes	street	Sumner Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 11	Yes	street	Sherman Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 12	Yes	street	Randolph Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 13	Yes	street	Putnam Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	yes	yes	Ocean	path to beach, handicap, port-a-potty
M 14	Yes	street	Prescot Avenue	Commonwealth Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	boardwalk to beach
M 15	Yes	street	Nelson Avenue (1091 S Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	boardwalk to beach
M 16	Yes	street	Jasper Avenue (1291 Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	boardwalk to beach
M 17	Yes	street	Morris Avenue (1191 Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	path to beach
M 18	Yes	street	Hawthorne Ave	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	yes	yes	Ocean	Vehicle Access w/ gate, Port-a-Potty
M 19	Yes	street	1607 Commonwealth Ave	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Walkover structure
M 20	Yes	street	Cleveland Avenue (1707 Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Walkover Structure
M 21	Yes	street	Arthur Avenue (1901 Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Walkover Structure
M 22	Yes	street	Hayes Avenue (2101 Commonwealth Ave)	Prescott Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Walkover Structure
M 23	Yes	street	Grant Avenue (2215 Commonwealth Ave)	Taylor Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Crossover Structure
M 24	Yes	street	2315 Commonwealth Ave	Taylor Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Crossover Structure
M 25	Yes	street	2505 Commonwealth Ave	Taylor Ave	no	yes	restricted	restricted	no	no	no	no	no	yes	no	Ocean	Dune Crossover Structure, Port-a-Potty
M 26	Yes	street	2705 Commonwealth Ave	Taylor Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Path
M 27	Yes	street	2613 Commonwealth Ave	Taylor Ave	no	yes	restricted	restricted	no	no	no	no	no	no	no	Ocean	Dune Walkover Structure
M 28	Yes	street	Seacliff Avenue	Bayview Dr	no	yes	no	n/a	no	no	no	no	no	no	no	Bay	Fence at bulkhead, drainage outfall
M 41	Yes	street	Willard Avenue	Bayview Dr	no	yes	restricted	n/a	no	no	no	no	no	no	no	Bay	Bulkhead @ street end; Visual
M 42	Yes	street	Whittier Avenue	Bayview Dr	no	yes	yes	n/a	no	no	no	no	no	no	no	Bay	Bulkhead @ street end
M 43	Yes	street	Webster Avenue	Bayview Dr	no	yes	restricted	n/a	yes	yes	no	no	no	no	no	Bay	tot lot, fenced in; Visual
M 44	Yes	street	Sumner Avenue	Bayview Dr	no	yes	yes	n/a	no	no	no	no	no	no	no	Bay	Bulkhead @ street end
M 45	Yes	street	Putnam Avenue	Bayview Dr	no	yes	yes	n/a	no	no	no	no	no	no	no	Bay	Bulkhead @ street end
M 51	Yes	street	South end of Bayview Dr	Bayview Dr	no	yes	yes	n/a	no	no	no	no	no	no	no	Bay	ramp area with limited parking, free
M 52	Yes	street	Taylor Avenue	Bayview Dr	no	yes	yes	n/a	no	no	no	no	no	no	no	Bay	ramp area with parking, free
M 53	Yes	Lot, Free	Beesley's Point Beach (Harbor Rd)	Shore Rd	no	yes	yes	n/a	no	yes	yes	yes	no	yes	yes	Bay	Township beach, parking, boat ramp (fee)
M 54	Yes	Lot, Free	Tuckahoe Beach (Mosquito Landing Rd)	Rt-50	no	no	yes	n/a	no	no	yes	no	no	no	no	River	non-motorized boat Ramp, no-swimming due to water quality
M 61	no	street	Cedar Avenue	Marshallville Rd	no	no	no	n/a	no	no	no	no	no	no	no	River	street end, Very steep bank
M 62	no	street	Upper Bridge Rd	Rt-50	no	no	yes	n/a	no	no	no	no	no	no	no	River	street end, deep water access
M 63	no	street	Lincoln Blvd	S. Frances Dr	no	no	no	n/a	no	no	no	no	no	no	no	River	Street end, marsh access

Table 1 Upper Township Public Access Location Amenities

March 11, 2020

Explanation of table:

SIGNS: Does the location provide signage identifying the location as a point of public access? Yes or No

PARKING: Is parking for the location/facility provided on the street or in a lot and is it free or do you have to pay? Street, free; Street, pay; Lot, free, Lot, pay

STREET: On what street is the public access located?

CROSS STREET: What is the cross street where this location is located?

BADGE: Are there times when a badge is required to use this location? Yes or No

SWIMMING: Is swimming permitted at this location? Yes or No (Limitations on swimming, such as hours, lifeguards, etc., are discussed in Section II.B and C)

FISHING and SURFING: Is fishing/surfing permitted at this location? Yes or No (Limitations/restrictions are discussed in the Section II.B and C)

PLAYGRD, PARK, PIER, BOATLNCH, MARINA, RESTRMS: Does this location include these amenities? Yes or No

H/C: What amenities are handicap accessible at this location/facility? (Not necessarily ADA Compliant) None, Parking reserved, Ramp provided, and/or Restrooms accessible

SHORELINE: What shoreline does this location inhabit? Ocean, Bay, River and/or inlet

ACCESS TYPE: Describe the type of access: Beach, Fishing, Boat, and/or Visual

APPENDIX 3

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 000-2020

**RE: AUTHORIZING THE MAYOR TO SIGN DEED OF DEDICATION
AND PERPETUAL PUBLIC ACCESS EASEMENT**

WHEREAS, the Upper Township Planning Board approved the Township of Upper Municipal Public Access Plan (MPAP) and has recommended that it be incorporated in the Master Plan on February 20, 2020, and

WHEREAS, the MPAP was submitted to Township Committee and the governing body approves the plan as submitted, and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Mayor of the Township of Upper is hereby authorized, directed, and empowered to sign a Deed of Dedication and Perpetual Public Access Easement.
3. 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
4. All Township officials, officers and employees are empowered to take such action as may be necessary or advisable in order to carry out the intent and purpose of this Resolution.

RICHARD PALOMBO, Mayor

BARBARA L. YOUNG, Twp. Clerk

**DEED OF DEDICATION AND
PERPETUAL PUBLIC ACCESS EASEMENT**

THIS DEED OF DEDICATION AND PERPETUAL PUBLIC ACCESS EASEMENT is made this
_____ day of _____, 2020 BY AND BETWEEN

The Township of Upper, a Municipal Corporation whose address is 2100 Tuckahoe Road,
Petersburg, NJ 08270, referred to herein as "Grantor",

AND

The Township of Upper, a Municipal Corporation of the State of New Jersey whose address is 2100
Tuckahoe Road, Petersburg, NJ 08270, and THE STATE OF NEW JERSEY both of whom are
referred to herein collectively as the "Grantees."

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the Township of Upper,
County of Cape May, State of New Jersey, and/or identified as public street ends as identified in
Addendum A (Approximate Street End and Tract of Land Descriptions) and as identified in the Township
of Upper Public Access Map last dated January 27, 2020 on file with the Municipal Clerk, hereinafter the
"Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantees recognize that tidal waterways and their coastlines at Township of
Upper, New Jersey are valuable economic resources to the municipality and the State of New Jersey;
and

WHEREAS, access to tidal waterways at Township of Upper, New Jersey is a right provided to
the public under the Public Trust Doctrine; and

WHEREAS, in order for the public to access tidal waterways, perpendicular access to these areas
must be secured for public use; and

WHEREAS, in order to ensure public access, Grantees need a Perpetual Public Access Easement
on portions of said Property(s) herein described; and

WHEREAS, the Township of Upper shall consider this Deed of Easement in establishing the
assessed value of any lands subject to such restrictions; and

WHEREAS, this Deed of Dedication and Perpetual Public Access Easement shall be subject to
and consistent with any existing public access agreement or easement entered into by the Municipality
with the United States Army Corps of Engineers; and

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and
ensure permanent public access, use and enjoyment of tidal waterways and their shores.

NOW, THEREFORE, 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 across that
land of the Property(s) described as public street ends as identified in Addendum A (Approximate Street
End and Tract of Land Descriptions) and as identified in the Township of Upper Public Access Map last
dated January 27, 2020 on file with the Municipal Clerk, hereinafter the "Property(s)," and Grantor holds

the requisite interest to grant this Deed of Easement listed above for use by the State of New Jersey and the Township of Upper, their representatives, agents, contractors and assigns to:

- Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public access area to allow the public access to tidal waterways;
- Post signs;

The easement reserves to the Grantor, the Grantor's, successors and assigns the right 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.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Township of Upper or the State of New Jersey shall become merged with any other geopolitical 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 representatives, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Municipality to Maintain Public Access: 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 preserve, cause and ensure the public access areas to be maintained, consistent with all applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey.

Character of Property(s): Notwithstanding the foregoing, nothing herein is intended or shall be deemed to grant the Grantees or otherwise permit the Grantee to any other person to cross over or use any part of the Property(s) 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(s).

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

Miscellaneous:

- 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 Grantee 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,
- The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey,
- If any provisions of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Easement or the application of such provisions to person or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby,
- 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 relocation party shall notify the other, in writing,
- 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.
- Structures not part of the project are not authorized.

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

Witnessed by:

Township of Upper, Grantor

STATE OF NEW JERSEY

Richard Palombo, Mayor

COUNTY OF CAPE MAY

SS:

I certify that on _____, 2020 Richard Palombo, Mayor of the Township of Upper, personally appeared before me and acknowledged under oath, to my satisfaction, that this person:

- Was the Grantor of this Deed;
- Was authorized to and did execute this Deed as Authorized Signatory of the entity named in this Deed;
- Made this Deed for the full and actual consideration as set forth herein;
- Executed this Deed as the act of the entity,

Notary Public of New Jersey

Easement Accepted by:

State of New Jersey

STATE OF NEW JERSEY

SS:

COUNTY OF _____

I certify that on _____, 2020 _____ of the State of New Jersey, personally appeared before me and acknowledged under oath, to my satisfaction, that this person:

- Was the Grantee of this Deed;
- Was authorized to and did execute this Deed as Authorized Signatory of the entity named in this Deed;
- Made this Deed for the full and actual consideration as set forth herein;
- Executed this Deed as the act of the entity.

NOTARY PUBLIC OF NEW JERSEY

ADDENDUM A

Approximate Street End and Tract of Land Descriptions

Street	Description
Seaview Avenue	Extending Eastwardly from the intersection of Neptune Avenue to the terminus of Seaview Avenue
Seacliff Road	Extending Eastwardly from the intersection of Neptune Avenue to the terminus of Seacliff Avenue
Winthrop Avenue	Extending Eastwardly from the intersection of Neptune Avenue to the terminus of Winthrop Avenue
Williams Avenue	Extending Eastwardly from the intersection of Neptune Avenue to the terminus of Williams Avenue
Willard Avenue	Beginning approximately 477' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Willard Avenue
Whittier Avenue	Beginning approximately 450' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Whittier Avenue
Webster Avenue	Beginning approximately 450' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Webster Avenue
Vincent Avenue	Beginning approximately 460' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Vincent Avenue
Tecumseh Avenue	Beginning approximately 490' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Tecumseh Avenue
Sumner Avenue	Beginning approximately 435' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Sumner Avenue
Sherman Avenue	Beginning approximately 365' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Sherman Avenue
Randolph Avenue	Beginning approximately 150' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Randolph Avenue
Putnam Avenue	Beginning approximately 200' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Putnam Avenue
Prescot Avenue	Beginning approximately 135' from the intersection of Commonwealth Ave extending Eastwardly to the terminus of Prescott Avenue
Nelson Avenue (1091 S Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Nelson Avenue
Jasper Avenue (1291 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Jasper Avenue
Morris Avenue (1191 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Morris Avenue
Hawthorne Ave	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Hawthorne Avenue
1607 Commonwealth Ave	Block 793 Lot 1
Cleveland Avenue (1707 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Cleveland Avenue
Arthur Avenue (1901 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Arthur Avenue
Hayes Avenue (2101 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Hayes Avenue
Grant Avenue (2215 Commonwealth Ave)	Extending Eastwardly from the intersection of Commonwealth Ave to the terminus of Grant Avenue
2315 Commonwealth Ave	Block 765 Lot 1
2505 Commonwealth Ave	Block 760 Lot 3
2705 Commonwealth Ave	Block 753 Lot 2
2613 Commonwealth Ave	Block 759 Lot 1.01
Seacliff Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Seacliff Avenue
Willard Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Willard Avenue
Whittier Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Whittier Avenue

Webster Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Webster Avenue
Sumner Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Sumner Avenue
Putnam Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Putnam Avenue
Nelson Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Nelson Avenue
Taylor Avenue	Extending Westwardly from the intersection of Bayview Drive to the terminus of Taylor Avenue
Beesley's Point Beach	Being Block 682 Lot 3
Tuckahoe Beach Mosquito Landing Rd	Being Block 348 Lot 13
Cedar Avenue	Extending Northerly from the intersection of Marshallville Road Drive to the terminus of Cedar Avenue
Upper Bridge Rd	Beginning approximately 1,145' from State Highway Rt-50 extending Eastwardly to the terminus of Upper Bridge Road
Lincoln Blvd	Extending Eastwardly from the intersection of Virginia Ave to the terminus of Lincoln Blvd