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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF LAND USE REGULATION

Coastal Permit Program
Coastal Zone Management
Public Access

Proposed Amendments: N.J.A.C. 7:7-1.3, 7.5 through 7.14, 7.17, 7.18, 7.24, 7.26, 7.29;
N.J.A.C. 7:7E-1.8, 3.22, 3.23, 3.43, 3.48, 3.50, 7.2, 7.3, 7.4, 7.7, 7.11, 8.11, and 8.12
Proposed Repeal: N.J.A.C. 7:7E-8A

Authorized by: Bob Martin, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:19-1 et seq.; 12:3-1 et seq., 12:5-3, 13:9A-1 et seq.;

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 05-11-03

Proposal Number: PRN 2011-

Public hearings concerning this proposal will be held as follows:

Thursday, May 12, 2011, 11:00 a.m.

Liberty State Park Central Railroad Terminal Building

Blue Comet Auditorium

1 Audrey Zapp Drive

Jersey City, NJ 07305

Tuesday, May 17, 2011, 11:00 a.m.

Richard Stockton College of New Jersey

Townsend Residential Life Center Multi-Purpose Room

Jimmy Leeds Road

Pomona, NJ 08420

Submit written comments by Friday, June 3, 2011 to:

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Gary J. Brower, Esq.
Office of Legal Affairs, Mail code 401-04L
Attn: DEP Docket Number: 05-11-03
NJ Department of Environmental Protection
401 East State Street, Floor 4
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on CD or DVD as well as on paper in order to facilitate incorporation of submitted comments into its comment-response document. For this purpose, the comments on CD or DVD should not be access-restricted (locked or read-only). The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Submission of a CD or DVD is not a requirement. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

A copy of the proposal is available on paper or on CD by calling the Department at (609) 633-7021. The rule proposal can also be found at the Department's website (www.nj.gov/dep). The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to restructure when and how it requires public access to tidal waters and their shorelines under the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management (CZM) rules, N.J.A.C. 7:7E. The

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changes are proposed in response to the ruling of the Appellate Division limiting the Department's authority to require additional parking and restrooms from municipalities receiving State shore protection funding (see *Borough of Avalon v. NJ Department of Environmental Protection*, 403 N.J. Super. 590 (App. Div. 2008)), due to Legislative action (see Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq.), and because the Department believes that public access to tidal waters can be provided in a more effective and comprehensive manner. Public access can better be provided by applying common sense principles of governing, working with local governments, eliminating unnecessary burdens on residents, businesses, and governmental entities, and by bringing other resources to bear to create a comprehensive public access program that is beyond merely imposing proscriptive regulatory requirements.

In short, the Department is transforming how it accomplishes its environmental and policy goals in recognition that results matter, and such results can be accomplished without extensive and proscriptive regulatory requirements. The Department is guided in this effort by the standards set forth in Governor Christie's Executive Order No. 2(2010) which demands that rules be governed by a set of "common sense principles." The Red Tape Review Group's Findings and Recommendations (April 19, 2010) (see http://www.nj.gov/governor/news/news/552010/pdf/20100419_rtr_final_report.pdf) also determined that elements of the existing public access rule needed revision. The Department has listened to the many commenters who have told the Department that a one size fits all regulatory approach is not only ineffective and excessively burdensome, but that public access can best be enhanced by recognizing the different geographies of the State and the differing needs of the public.

As part of its intent to maintain a robust public access policy, the Department engaged in a thorough review of its public access regulations and policies. Part of that review consisted of stakeholder meetings seeking input from representatives of marine trades, environmental and recreational interests, business and industry, and coastal zone municipalities. The Department held the first public access rule work group meeting on

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April 27, 2010 at which oral comments were received. There were approximately thirty attendees.

On August 17, 2010, the Department posted on its website and requested comment on draft proposed rules for enhanced public access to the State's coastal and other tidal waters, suggesting reasonable regulations, but also employing additional, common sense measures to enhance public access. On August 18, 2010 the Department held a second stakeholder meeting and approximately twenty-five attended. The attendees were given a draft of the proposed amendments and in addition to comments received at the meeting, written comments were accepted. The Department received ten comment letters which resulted in approximately thirty-five separate comments.

The Department made several changes to the proposal as a result of the comments. Some comments were suggested for clarification. For example, a commenter suggested consolidating the terms "Homeland Security Development" and "Homeland Security Use," to one term "Homeland Security Facility." Other comments resulted in more substantive changes. For example, a commenter suggested that upon the expiration of a municipal public access plan, there should be a requirement for the municipality to provide a progress report before such plan is extended. Another commenter suggested that it is not appropriate to base the access requirement for residential development on the number of units (the initial draft proposal established a public access requirement for residential development consisting of more than 24 units). As a result, the current proposal bases the access requirement on the linear feet of water-frontage.

The Department has long recognized public access as a fundamental and important part of the Department's policies for management of the State's coastal zone and has imposed requirements for access to tidal waters since the initial development of the Department's coastal zone management policies. For example, since the earliest stages of implementation of New Jersey's Coastal Zone Management program, assuring public access to the waterfront has been one of the Department's goals (see, for example, September 1977, Department of Environmental Protection, Coastal Management Strategy for New Jersey, CAFRA Area, Rocco D. Ricci Commissioner, Brendan Byrne, Governor,

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available for review by contacting the Department at (609) 777-0454). The Department's efforts to promote public access, and its promulgation of public access requirements, derive from various authorities, including the Public Trust Doctrine, the Federal Coastal Zone Management Act of 1972, 16 U.S.C. 1531 et seq., as implemented by the State of New Jersey, and the Department's management of the State's coastal areas under the Coastal Area Facility Review Act (CAFRA) N.J.S.A. 13:19-1 et seq., and other statutes.

At its core, the Public Trust Doctrine acknowledges that the ownership, dominion and sovereignty over lands flowed by tidal waters, which extend to the mean high water mark, is vested in the State in trust for the people. The public's right to use the tidal lands and water encompasses the historic needs of navigation and fishing as well as the modern need for recreational uses. *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J.296, 309 (1972). The doctrine also recognizes that the public's right might be dependent on a right to pass along upland beach. "Without some means of access the public right to use the foreshore would be meaningless." *Matthews v. Bay Head Improvement Association*, 95 N.J. 306, 323 (1984). However, the public's right over upland areas is not unlimited and will depend on the circumstances. The Matthews Court held that factors to be considered are the location of the upland to the public trust lands, the extent and availability of publicly owned lands, the nature and extent of the public demand, and the usage of the upland by the property owner. *Id.* at 365.

While litigation has led to court decisions expanding public access to the shore through application of the Public Trust Doctrine, such a case-by-case approach is inadequate to ensure that public access to the water is provided in a comprehensive and consistent manner Statewide.

Public access to the water is vital to the State's economy and quality of life for its residents. Ocean and water access in large part define New Jersey as a community. The ocean, shore and tidal waterways are also inextricably tied to the State's economic health and well-being. Tourism, mostly tied to the shore communities, is a \$38 billion a year industry. The quality of life in this State is directly linked to its proximity to the Atlantic Ocean and other coastal and tidal waterways. It is in the public's best interest to enhance

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access to the greatest extent practicable and in all reasonable manners. The proposed rules, which are part of a larger effort to promote and enhance access, are intended to do that.

It is for these reasons that the Department believes it is essential that public access opportunities be extensive and not merely rooted in the limited common law Public Trust Doctrine but rather in a robust modern implementation of an essential public need and right. It is important to note that nothing in these proposed rules would limit the rights the public has under the Public Trust Doctrine. The proposal explicitly so provides. What the proposal does, as part of a larger program to ensure public access opportunities, is develop a comprehensive means for the public to have broad, diversified, safe, and reasonable access to tidal waters throughout the State.

While the Department plans to continue to impose reasonable public access regulatory requirements as part of its Coastal Zone Management program, the Department also believes that it can significantly enhance the public's enjoyment and use of the ocean, bays, and other tidal waters by employing a host of other measures as well. These measures include: assisting and providing incentives for municipalities to create Municipal Public Access Plans to plan for and enhance access opportunities; setting aside Green Acres and other resources to help municipalities implement their plans; and effectively communicating with the public so that people know of, and can take advantage of, the many public access opportunities that exist throughout the State. The Department is also proposing to expand the definition of public access to recognize the many ways the public enjoys the water and their need to be in proximity to the waterfront.

The Department has established teams of professionals to work with municipal officials to put together Municipal Public Access Plans with the intent of enhancing the public's access to tidal waters in a more comprehensive manner rather than the current, limited, purely regulatory approach. The plans will look at current public access opportunities within the municipality, the needs of the public, and explore and plan for enhanced access opportunities. Municipalities that develop plans will have greater

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opportunities to plan and control public access within their boundaries, be able to collect monies in an access fund that could be used for municipal projects, and be eligible for specifically dedicated Green Acres loans and grants as part of a Blue Trails program.

Municipalities that do not have such plans may be ineligible for any Green Acres loans or grants for any purpose within that municipality. Additionally, municipalities without plans may rank lower for shore protection funding projects and would not be eligible for certain general permits.

The Department will also provide the public with the information it needs to be able to choose the most appropriate location to enjoy the State's coastal and tidal waters. The Department has already begun to compile, to post on a Department web site, and to otherwise distribute information concerning access points, facilities, amenities, costs, and other vital facts and this information will be continually expanded (go to www.state.nj.us/dep/cmp/access). Families will know what beaches are best for their needs and those wanting a more secluded experience will know where these beaches exist and how to access them. Effective communication will allow the public to make informed decisions.

The Department also understands that public access is more than just passive physical access to the waterways. Public access needs to be as diverse as the interests of the many people in the State and beyond who come to its shore and waterfront communities. The State needs to ensure that there is sufficient and reasonable access to beaches on which to bathe, rivers and streams in which to canoe or kayak, bays in which to fish, and ports and marinas in which to conduct commerce and navigation. The Department also recognizes that the public enjoys and expects to be able to eat, drink, relax, and recreate along the ocean, bays, and rivers. The Department thus is supporting as a legitimate public access opportunity the establishment of restaurants, bars, and other recreational and amusement facilities to be built along tidal waterways as part of an overall, balanced strategy to provide comprehensive and diverse opportunities for the public to enjoy these resources. The New Jersey shore and riverfront communities are diverse, active lands, where people come to enjoy being in close proximity to the water

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and where the economy thrives. This is clearly evidenced by the millions of tourists who come to the shore each year, to walk the boardwalks, enjoy the piers and eat and drink along the waterways. It is also evident by the many people who fish in the State's waters, along bridges and pocket parks, as well as from the shores. It is evident in the many boats and other vessels that navigate the State's waters for recreation or commercial activities and that depend on access to the water as well as a vibrant public and private marina industry. And it is also evident by the State's vital ports and industrial areas that depend upon access to the water.

In summary, the Department intends to uphold its historical role in promoting and protecting the public's right to access tidal waters, for navigation, fishing, and recreation, but will accomplish these significant public policy goals in a broad-based, effective, and comprehensive manner. It recognizes the role regulations play as well as the gains that can be made by cooperatively working with our municipal leaders. The Department believes that communication is vital to enhance public access opportunities and that other means to provide for access should be part of a continuing process of improvement. While it is recognized that nearly all the oceanfront municipalities do provide reasonable public access opportunities as evidenced by the large number of residents and tourists that enjoy and visit the shore, the Department believes that improvements can and should be made and it is committed to move in that direction. The Department also recognizes that more meaningful public access to tidal waters in urban areas must be provided and enhanced and is similarly committed to that goal. Department staff has already begun work with officials in several urban municipalities to help them meet the waterfront access needs of their residents. It is for all these reasons that the Department is proposing the following regulatory changes as part of a comprehensive effort to maintain and enhance public access to our tidal waters.

General

In addition to amendments proposed to specific portions of the rules, which are discussed in detail by section below, the Department is proposing several changes that impact multiple provisions within the rules.

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With the exception of the lands and waters subject to public trust rights special area rule at N.J.A.C. 7:7E-3.50, proposed changes to which are described in greater detail below, the Department has throughout the rules eliminated the reference to public trust rights and replaced it with a reference to public access. This change was made in the following provisions of the CZM rules: N.J.A.C. 7:7E-3.22(c); 3.23(i); 3.43(c) and (d); 3.48(f); 7.2(b)2iii, 3, (e)5 and (f)5; and 7.3(d); 7.4(b)3; 7.7(b); and 7.11(d)1iv and (e)4. Similar changes are proposed to the Coastal Permit Program Rules (N.J.A.C. 7:7) at the following citations: N.J.A.C. 7:7-7.5(a)10, 7.6(a)3, 7.7(a)8, 7.8(g), 7.9(g), 7.10(a)7, 7.11(c), 7.12(c), 7.13(c)2, 7.14(b)2, 7.17(b), 7.18(a)11, 7.24(a)3, 7.26(a)9, and 7.29(f). The Department believes this term more accurately describes the comprehensive public access opportunities to be accomplished through these rules.

In recognition of the Court's holding in the *Borough of Avalon* case cited above limiting the Department's authority to adopt rules requiring a municipality to provide additional parking and restrooms as a condition of receiving an appropriation from the Shore Protection Fund, the Department has deleted the following requirement where it appears in both the Coastal Permit Program and the CZM rules, "Additional requirements may be imposed as a condition if Shore Protection Program funding is utilized, pursuant to N.J.A.C. 7:7E-8.11(p)." The deletion has been made to N.J.A.C. 7:7-7.8(g), 7.9(g), 7.10(a)7, 7.11(c), 7.12(c), 7.14(b)2, 7.18(a)11, and N.J.A.C. 7:7E-7.2(e)5 and (f)5.

The Department is also proposing to delete requirements in the CZM rules requiring public access for projects receiving Green Acres funding. These deletions are all contained in N.J.A.C. 7:7E-8.11. In those cases where a coastal permit is approved for property for which Green Acres funding was obtained, the Green Acres public access requirements will govern (See N.J.A.C. 7:36). The Green Acres rules require that a "local government unit or nonprofit shall ensure that funded parkland is open and that reasonable public access, as determined by the Department, is afforded to all New Jersey residents" (see N.J.A.C. 7:36-25.10). For parkland that did not receive Green Acres funding (in a town that has taken State Green Acres funding for other lands), the Green Acres rules require that a "local government unit shall ensure that undeveloped unfunded

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parkland is open and reasonable public access is afforded to all New Jersey residents. A local government unit that operates or develops a recreation and conservation facility on unfunded parkland without Green Acres funding may adopt fees and schedule the use of that facility at its discretion” (see N.J.A.C. 7:36-25.11).

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

N.J.A.C. 7:7-1.3 Definitions

In keeping with the Department’s efforts to promote public access, the Department is proposing to expand the definition of “amusement pier” at N.J.A.C. 7:7-1.3 to permit bars, restaurants, and other entertainment venues to be considered as allowed “amusements” on these structures. The expanded definition would allow bars and restaurants, as well as other entertainment venues such as stage and band areas and associated seating areas, to be included on amusement piers. While bars and restaurants were previously excluded from the definition, the Department believes that including these uses, as well as entertainment uses, will expand the public’s opportunity for both visual and physical access since the piers would now be viable for year-round use. Also, expanding the definition to include these additional uses will make the rehabilitation of existing dilapidated piers economically attractive which will lead to increased investment as well as increased use of the shore area.

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

In addition to the previously described amendment at N.J.A.C.7:7-7.6(a)3 to change the reference from public trust rights to public access rule, the Department is proposing to change the way this general permit is applied to municipal applicants. Because beach and dune maintenance activities relate directly to the use of the beach by the public, the Department is proposing to limit the applicability of this general permit to those municipal applicants that develop and obtain approval of a municipal access plan in

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accordance with the rules at N.J.A.C. 7:7E-8.11(d) through (m). In this way the Department will encourage municipalities performing beach and dune maintenance activities to do so within the context of an overall municipal public access plan. Applicants who are not municipalities may apply for the general permit to conduct beach and dune maintenance activities. In accordance with proposed N.J.A.C. 7:7E-8.11(c)1, those non-municipal applicants would have to comply with any applicable provisions in a municipal access plan, if one exists in the municipality in which they intend to work. However, if no plan exists, they will not be precluded from obtaining the general permit for beach and dune maintenance activities.

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

In addition to amendments to public access terminology, at N.J.A.C. 7:7-7.26 the Department is proposing to amend the coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units to allow certain structures to remain in-place on a year-round basis, except during periods of emergency. Such structures include underground utilities, floor decking, open drink and food concession stand shells, and stage shells. In the past year, there have been various legislative initiatives that sought to amend this general permit to allow for certain structures to remain in place on a year-round basis. The Department has reviewed the rationale for removing the structures and determined that allowing certain types of development to remain in place during non-emergency periods will not pose serious adverse impacts to the beaches and shoreline since all of the other standards for development remain in the general permit.

At N.J.A.C. 7:7-7.26(a)1, the Department is proposing to allow exceptions to the existing requirement that specified structures remain in place only from May 1 through

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October 31. Currently structures authorized by this general permit may remain in place from May 1 through October 31 of each year. Proposed N.J.A.C. 7:7-7.26(a)1i, will allow underground utilities, floor decking, concession stand shells and stage shells to remain in place on a year-round basis. All other structures will continue to have to be removed from November 1 to April 30.

New N.J.A.C. 7:7-7.26(a)2 requires structures authorized by this general permit that are located on a beach, except underground utilities, to be removed throughout the year any time that the National Weather Service issues a Severe Weather Alert for the municipality in which the development is located, for significant weather events, such as Coastal Flood Warning, Extreme Wind Warning, Hurricane Warning, Tornado Warning or Tropical Storm Warning, that would directly affect structures left on the beach, until the Severe Weather Alert is lifted. This is intended to limit damage that may be caused by debris generated by structures becoming dislodged during a storm or disaster event.

N.J.A.C. 7:7-7.26(a)10 has been recodified to N.J.A.C. 7:7-7.26(a)11 and reworded for clarity. There are no changes in substance.

Coastal Zone Management rules N.J.A.C. 7:7E

N.J.A.C. 7:7E-1.8 Definitions

The Department is proposing to add to N.J.A.C. 7:7E-1.8 definitions for the terms “amusement pier,” “critical infrastructure,” “dwelling unit,” “homeland security facility,” “industrial development,” “natural area,” “parcel,” “public development,” “redevelopment,” and “residential development.”

The definition for the term “natural area” is currently codified at N.J.A.C. 7:7E-8.11(b) and is proposed to be recodified without amendment.

The proposed definitions for the terms “industrial development,” “public development,” and “residential development,” are identical to the definitions of these same terms in the Coastal Permit Program Rules at N.J.A.C. 7:7-1.3. These terms are

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used in the housing use rules at N.J.A.C. 7:7E- 7.2 and in the proposed amendments to public trust rights rule at N.J.A.C. 7:7E-8.11. The proposed definition of “amusement pier” is the same as the proposed amended definition of the same term in the Coastal Permit Program rules at N.J.A.C. 7:7-1.3 as described above.

The Department is proposing new definitions for the terms “critical infrastructure,” “homeland security facility,” “parcel,” and “redevelopment.” A “homeland security facility” or “critical infrastructure” is any facility that has been determined to be either critical in nature or a key resource by the New Jersey Office of Homeland Security and Preparedness or the Federal Department of Homeland Security. These facilities may include, but are not limited to, airports and military facilities, transportation infrastructure, certain chemical or energy facilities and utilities, marine terminal or transfer facilities, and freight or passenger rail lines. The Department is including both homeland security and critical infrastructure because the New Jersey Department of Transportation refers to its homeland security concerns using the term “critical infrastructure,” while other agencies refer to “homeland security facilities.”

The Department is proposing a new definition for “parcel.” The Department distinguishes in the public access rules between developments that are expanding without the addition of new property and those that obtain new property for expansion. Therefore, it is necessary to have a definition to describe the parcel of land as it exists on (the date of proposal), which is the proposal date for these rule amendments.

The term “redevelopment”, although used throughout the Coastal Zone Management rules, has never been defined because it is almost always coupled with the term “development” (as in “development and redevelopment”) and, to date, the Department has not assigned different standards or criteria for “redevelopment” as opposed to “development” activities. A specific definition is needed at this time because redevelopment is among the list of activities for which public access is not required. The Department is proposing to define “redevelopment” as the development of a site that has been inactive, underutilized, or abandoned for 5 years or less. The concept of “inactive, underutilized” is the same as that used in the goals of the CZM rules. That is, the

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Department should encourage “the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses” (see N.J.A.C. 7:7E-1.1(c)4ii), and manage coastal activities and foster well-planned communities and regions that encourage “mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites.” (See N.J.A.C. 7:7E-1.1(6)i(1)). The Department is proposing that 5 years be the maximum amount of time for a site to have been abandoned and still considered to be “redeveloped” instead of “developed” because after a longer period of time, natural environmental conditions reestablish on a site. Thus, 5 years is the same amount of time used to limit the reconstruction of a house in wetlands under the Freshwater Wetlands Protection Act rules (see N.J.A.C. 7:7A-5.8(a)1), and 5 years is used as the criterion for abandonment of farm fields under those rules (see definition of abandoned at N.J.A.C. 7:7A-1.4).

N.J.A.C. 7:7E-3.48 Hudson River Waterfront Area

At N.J.A.C. 7:7E-3.48, Hudson River Waterfront Area, the Department is proposing to amend the reference to compliance with the public trust rights rules at N.J.A.C. 7:7E-8.11, and to specify that the portions of N.J.A.C. 7:7E-8.11 that apply to the Hudson River waterfront area are located at N.J.A.C. 7:7E-8.11(a), (n)3i, 4i and 5. In addition, the Department is proposing to delete the cross-reference to N.J.A.C. 7:7E-8.11(f) at N.J.A.C. 7:7E-3.48(f) and replace it with a cross reference to N.J.A.C. 7:7E-3.40. The reference to N.J.A.C. 7:7E-3.50 makes clear that in instances where the Department allows a departure from strict compliance with this rule, it can only do so in compliance with the lands and waters subject to public trust rights rule.

At N.J.A.C. 7:7E-3.48(e) the Department is proposing to provide an exception to the requirement to provide 24-hour access if it can be demonstrated to the Department that the provision of public access is not practicable based on the risk of injury from substantial permanent obstructions or proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the

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subject property. The proposed amendment is consistent with the overall amendments that are being proposed for all types of public access which allow the Department to consider site-specific circumstances when determining whether or not, and to what extent, public access is required. For example, at N.J.A.C. 7:7E-8.11(n)3ii, the Department requires onsite public access for industrial or public development unless access is not practicable based on the risk of injury from proposed hazardous operations or substantial permanent obstructions and no measures can be taken to avert these risks, in which case offsite public access is acceptable.

N.J.A.C. 7:7E-3.50 Lands and waters subject to public trust rights

The Department is proposing to amend N.J.A.C. 7:7E-3.50(a) to better describe the special area to which public trust rights apply. In addition, the Department is proposing a description of the types of public access and the activities that the public may engage in once they have gained access to the water including navigation, fishing and recreational activities including swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating.

The Department is proposing to delete existing N.J.A.C. 7:7E-3.50(b), which states that development that adversely affects lands and waters subject to public trust rights is discouraged, and has incorporated this language in proposed N.J.A.C. 7:7E-3.50(b). The Department is proposing to amend N.J.A.C. 7:7E-3.50(d) and recodify it as N.J.A.C. 7:7E-3.50(b), and to state that, except for the Hudson River Waterfront Area, public access shall be provided in accordance with N.J.A.C. 7:7E-8.11. Proposed amendments further provide that access in the Hudson River Waterfront Area shall be provided in accordance with N.J.A.C. 7:7E-3.48. As previously stated, the changes to this section clarify that it is the effect on access to lands subject to public access requirements that is discouraged.

The Department is proposing to delete N.J.A.C. 7:7E-3.50(c) which addresses the moratorium that prevents the Department from applying the public access rule to

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marinas. The rule amendments contained later in this document address the concerns and issues regarding public access raised by the marina trades groups, so this subsection is no longer needed.

Finally, N.J.A.C. 7:7E-3.50(e), which contains the rationale for this section of the rules, is recodified as N.J.A.C. 7:7E-3.50(c) with no changes.

N.J.A.C. 7:7E-7.2 Housing use rules

In addition to changing the references at N.J.A.C. 7:7E-7.2 from public trust rights to public access, the Department is proposing to delete N.J.A.C. 7:7E-7.2(f)5i, since the provide a public access requirement related to beach and dune maintenance activities that is no longer consistent with the public access requirements contained at N.J.A.C. 7:7E-8.11. Both N.J.A.C. 7:7E-7.2(e) and (f) currently establish certain standards for public access which are cross-referenced at N.J.A.C. 7:7E-7.2(e)5i and (f)5i and that are no longer relevant since they are being superseded by the requirements throughout N.J.A.C. 7:7E-8.11.

N.J.A.C. 7:7E-7.3 Resort and recreational use (amusement piers, parks and boardwalks)

The Department is proposing to amend N.J.A.C. 7:7E-7.3(e)1 by deleting the definition of “amusement pier.” This definition, as amended to reflect changes proposed to the same term at N.J.A.C. 7:7-1.3, is being proposed to be recodified to N.J.A.C. 7:7E-1.8 (Definitions) to appear with all other definitions applicable to the CZM rules. Existing N.J.A.C. 7:7E-7.3(e)2 through 4 are proposed to be recodified as N.J.A.C. 7:7E-7.3(e)1 through 3 as a result of the removal of the definition from existing N.J.A.C. 7:7E-7.3(e)1. In addition, the Department is proposing to delete the reference to compliance with the public trust rights rule (N.J.A.C. 7:7E-8.11). An amusement pier, by definition, provides public access because it is structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, on which amusements for public enjoyment are

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located. The remaining, unchanged provisions at N.J.A.C. 7:7E-7.3(e), outline the specific public access criteria for amusement piers which differ from the requirements for other non-amusement piers contained at N.J.A.C. 7:7E-8.11(p).

N.J.A.C. 7:7E-8.11 Public access

The Department is proposing to rename this section “public access” and to focus the content on what constitutes public access and mechanisms to be used to satisfy public access requirements. The Department is proposing to amend N.J.A.C. 7:7E-8.11(a) to include a list of features that may constitute and provide public access, for example, streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights of way. In addition, the Department has included at N.J.A.C. 7:7E-8.11(a) the language from existing N.J.A.C. 7:7E-8.11(o) which states that no authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. 7:7E-3.50. Finally, the Department is informing applicants that authorizations or approvals under this chapter do not relieve them from the obligation to obtain a Tidelands approval, in those cases where such approval is required.

The Department is proposing to delete N.J.A.C. 7:7E-8.11(b), which contains definitions, because all definitions relating to public access will be contained in the definition section at N.J.A.C. 7:7E-1.8. In addition, the Department is proposing to delete N.J.A.C. 7:7E-8.11(c) through (f), including Appendix 6, which contain the substantive requirements for public access, and to replace them with proposed new standards at proposed N.J.A.C. 7:7E-8.11(c) through (z).

At proposed N.J.A.C. 7:7E-8.11(b), the Department is proposing public access goals. The goals will work in conjunction with those outlined at N.J.A.C. 7:7E-1.1(c) and will help guide the Department’s public access requirements as well as the requirements for Municipal Public Access Plans. The proposed goals are that: all levels of government in New Jersey strive to create and enhance public opportunities for access;

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existing public access be maintained while new development should provide onsite or offsite opportunities for access; and that in cases where there are conditions that would endanger the health or safety of the public or environment, or where access in a particular location could create a significant security vulnerability, access can be prohibited or limited temporally or in scope (for example, seasonally or hourly, or by activity).

Proposed N.J.A.C. 7:7E-8.11(c) provides information regarding how the remainder of the rule is structured and indicates what provisions are applicable to public access depending upon where the proposed project is located and the status of public access planning in the municipality within which the proposed project is located. The subsection specifies that the criteria for public access associated with the Hudson River Waterfront Area are found at N.J.A.C. 7:7E-3.48. N.J.A.C. 7:7E-8.11(c)1 directs applicants whose projects are in municipalities with Municipal Public Access plans approved on or before the date of receipt of a permit application by the Department, to the requirements at N.J.A.C. 7:7E-8.11(d) through (m). N.J.A.C. 7:7E-8.11(c)2 directs applicants for commercial, residential, industrial and public development, and homeland security facilities to N.J.A.C. 7:7E-8.11(n) for projects in municipalities without Municipal Public Access Plans approved on or before the date of receipt of a permit application by the Department. It also specifies that applicants for coastal permits will be required to submit a project specific access plan with their applications. Finally, N.J.A.C. 7:7E-8.11(c)3 directs applicants to the appropriate standards in the rules for public access at marina, pier, beach and dune maintenance, and shore protection projects at N.J.A.C. 7:7E-8.11(o), (p), (q) and (r) respectively. Municipalities cannot include such facilities in their Municipal Public Access Plans (see proposed N.J.A.C. 7:7E-8.11(g) with reference to marina and pier projects), so all of the criteria for providing public access as a result of activities associated with these facilities are contained in the Department's rules. The Department does not believe it would be appropriate to allow municipalities to provide varying standards for beach and dune maintenance or shore protection projects.

Proposed N.J.A.C. 7:7E-8.11(d) provides the opportunity for, and encourages the development of, Municipal Public Access Plans (MPAP). Municipalities that develop

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public access plans will be able to determine and direct public access suited specifically to the needs of the community. If a MPAP is completed and the Department deems it consistent with public access goals, Department-approved development along tidal waterways and their shores will be required to provide public access consistent with the municipal plan. In those cases where it is deemed appropriate to make a monetary contribution instead of providing public access onsite or offsite in the vicinity, municipalities with public access plans will receive those contributions for use in furthering public access goals in accordance with the strategy specified in the approved MPAP. N.J.A.C. 7:7E-8.11(d) also directs that MPAPs cannot provide for public access that is contrary to any other requirement in the Department's rules and provides examples of such requirements.

Proposed N.J.A.C. 7:7E-8.11(e)1 through 5 specify the components required for an acceptable MPAP. If a municipality already has a public access plan with some but not all of the components described, the municipality may supplement its existing plan, indicate to the Department where the existing plan addresses various components, and provide the Department with a complete package. There is no requirement that the municipality draft an entirely new plan. Further, the Department intends to provide extensive guidance, as well as sample plans, to facilitate the drafting of plans by municipalities.

Proposed N.J.A.C. 7:7E-8.11(e)1 requires the municipality to provide a statement describing the goals of the overall MPAP. This must include a description of administrative mechanisms to be used to implement the plan, and if the goal is to formulate a joint plan with a neighboring municipality, how that joint effort will be administered to assure that the access to be provided is permanently protected.

Proposed N.J.A.C. 7:7E-8.11(e)2 specifies that the application must also include a statement that the MPAP is consistent with the municipal Master Plan. Consistency with the municipal Master Plan is important because the municipal Master Plan is prepared by the planning board and, after public hearing, adopted or amended. Further, a master plan

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guides “the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.” (See N.J.S.A. 40:55D-28a). Finally, the municipal Master Plan includes a statement indicating the relationship of the proposed development of the municipality to the master plans of contiguous municipalities (see N.J.S.A. 40:55D-28d).

Proposed N.J.A.C. 7:7E-8.11(e)3 requires the municipality to conduct and provide in the MPAP a public access needs assessment. A public access needs assessment is an evaluation of the existing points and locations providing public access, the type of existing public access and water dependent and water oriented activities, the need for additional perpendicular public access locations, and existing practical limitations on, and/or alternatives for addressing the limitations associated with, providing public access.

Proposed N.J.A.C. 7:7E-8.11(e)4 requires submittal of a digital map and inventory that identifies tidal waterways and their shores and all land held by the municipality adjacent to such waterways. The map must also depict the location of all existing and proposed public accessways and public access facilities and specify which of those accessways and facilities are compliant with the Americans with Disabilities Act of 1990.

Finally, proposed N.J.A.C. 7:7E-8.11(e)5 requires the MPAP to include an implementation strategy. The strategy begins with the results of the needs assessment and, based upon the findings of that assessment, presents the forms and a comprehensive list of the types of public access to be provided based on local needs; includes tools to accomplish the desired public access and identifies and proposes any necessary modifications to existing local plans, ordinances or programs to support the MPAP. In addition, if the MPAP includes provision for monetary compensation in lieu of onsite public access, the plan must specify the types of uses (that is, residential, commercial, industrial and/or homeland security) for which a monetary contribution will be required.

The remainder of the requirements at proposed N.J.A.C. 7:7E-8.11(e)5 require an estimate of the costs associated with providing access in accordance with the MPAP and

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how it will be funded, together with a schedule for implementation. In addition, the municipality must identify measures to be implemented to protect the public access identified in the plan including recording of conservation easements/restrictions, or for municipally owned properties, through placement of the property on the municipal Recreation and Open Space Inventory; and include a draft resolution for incorporating the Department-approved MPAP into the municipal Master Plan. Finally, it is appropriate to incorporate the public access plan as part of the municipal master plan at N.J.A.C. 7:7E-8.11(e)5xi because the municipal master plan process provides the public outreach and notice needed to adopt an effective MPAP.

Proposed N.J.A.C. 7:7E-8.11(f) allows municipalities that obtain approval of a MPAP to require a monetary contribution in lieu of onsite public access. In order to be approved, the municipality must have a dedicated fund specifically for money collected for public access and must define the circumstances when it will require a monetary contribution in lieu of providing onsite public access. If a municipality includes provision for a monetary contribution in lieu of onsite access in its plan, N.J.A.C. 7:7E-8.11(f) specifies the formula that must be used in calculating the amount to be contributed by a development subject to the provision. The Department based the proposed formula on the costs for constructing a walkway because, in the Department's experience, this has been the standard option for providing public access. Although the Department acknowledges that the proposed rules allow several alternatives to a walkway, a walkway remains the option with the most predictable cost factors and was therefore deemed the most appropriate access type to form the basis of the cost formula. Further, the Department believes that this formula will result in an appropriate contribution to the designated offsite public access project because it approximates the cost of access that would have been provided onsite. The formula determines the contribution based upon the combined cost of purchasing land upon which to provide access (the land acquisition cost (LAC)) and the cost of constructing a public walkway that provides both perpendicular access to, and parallel access along, the shore (the total walkway cost (TWC)).

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The TWC is calculated by adding the length of the perpendicular access that would have had to have been provided on that site for onsite access (as measured in feet along the shorter property line running from the non-waterward property boundary to waterward property boundary) to the length of the waterfront portion of the property as measured in feet. This total accessway length is multiplied by 10 feet, which is the minimum walkway width required in proposed N.J.A.C. 7:7E-8.11(w), to obtain the total square feet of walkway. The TWC is determined by multiplying the total square feet of the walkway by \$7.00 per square foot. The Department determined that \$7.00 is a reasonable per square foot cost for walkway construction based on research that shows that the cost for materials to be used in walkway construction can vary from \$5.00 to \$9.00, if using concrete, to \$5.00 to \$17.00 (or more) for the use of a wood or composite decking.

The land acquisition cost (LAC) is determined by calculating the total cost of the site per square foot, based upon the equalized assessed value of the property (that is, determine the equalized assessed value of the entire property and then divide by the total square feet of the property to get a cost per square foot). “Equalized assessed value” is the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with N.J.S.A. 54:1-35 et seq. Equalized assessed values for communities statewide are available on the State Department of Treasury’s website at:

<http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>. The square footage cost is then multiplied by the total square feet of walkway to obtain the land acquisition cost. The Department has also included an example in the rules to demonstrate how to apply the formula.

Proposed N.J.A.C. 7:7E-8.11(g)1 through 4 establish that MPAPs cannot exceed the Department’s public access requirements for activities occurring in municipalities without an approved MPAP. For example, when the rules provide that no public access is required for certain activities in areas not subject to an approved MPAP, a municipality cannot require access through an MPAP for such activities. The rule also specifies that

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the Hudson River Waterfront Area, marinas and piers cannot be included within an approved MPAP. The Department believes that the Hudson River Waterfront Area, marinas and piers have unique issues and concerns and that these issues are best addressed through the Department's rules. These areas and structures within municipalities with an approved MPAP will continue to be governed by the requirements specified in the Department's rules for public access (and thus may not be subject to requirements such as a MPAP provision providing for monetary contribution in lieu of onsite public access).

Proposed N.J.A.C. 7:7E-8.11(h) requires that, in addition to submitting the proposed MPAP to the Department, a copy of the plan must be submitted to the county planning board and any regional planning entities with jurisdiction. If the plan proposes joint projects with neighboring municipalities to satisfy public access needs, in addition to providing a copy of the application packet to the municipality with which the joint project is planned, the rules require that the appropriate county planning board and regional planning entities for the neighboring municipality also receive a copy of the application. This will serve to inform these agencies about the MPAP, and provide additional locations at which the public may view the proposed MPAP.

Proposed N.J.A.C. 7:7E-8.11(i) provides that the Department will review applications for approval of a MPAP to determine whether the MPAP is consistent with the goals established at N.J.A.C. 7:7E-1.1(c) and N.J.A.C. 7:7E-8.11(b), as well as all requirements specified in N.J.A.C. 7:7E-8.11. N.J.A.C. 7:7E-8.11(i) describes the actions to be taken by the Department upon a determination that the MPAP is consistent with N.J.A.C. 7:7E-1.1(e), as well as the public access goals and requirements contained in N.J.A.C. 7:7E-8.11. Particularly, the proposal requires the Department to publish a notice in the New Jersey Register and DEP Bulletin to advise the public of its determination. The applicant municipality will additionally be directly notified of the decision.

Proposed N.J.A.C. 7:7E-8.11(j) provides that a Department-approved MPAP will be conditioned upon the incorporation of the approved plan into the municipal Master

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Plan. The municipality is required to provide the Department with a copy of the approved resolution demonstrating that the MPAP has been successfully incorporated into the Master Plan. As previously described, consistency with the municipal Master Plan is important because the municipal Master Plan guides “the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.” (See N.J.S.A. 40:55D-28a). Because the MPAP addresses public access which also promotes the general welfare of the community, the Department has proposed to require the municipality to incorporate the MPAP into the Master Plan.

Proposed N.J.A.C. 7:7E-8.11(k) states that upon the Department's receipt of proof of incorporation of an approved MPAP into the municipal Master Plan, public access requirements resulting from Department permitting for permit applications received after that date will be those specified in the MPAP. The Department believes that permit applicants who have designed a project and submitted an application to the Department prior to the MPAP having been incorporated into the Master Plan and proof of that incorporation having been provided to the Department to make the MPAP effective should be allowed to rely upon the rules in place when their permit application was submitted. Accordingly, for those permit applications under review by the Department at the time the municipality in which the proposed project is located files proof of incorporation of the MPAP into the Master Plan and proof of that incorporation having been provided to the Department to make the MPAP effective, the Department will continue its review and establish public access requirements in accordance with the rules in effect at the time the permit application was submitted, rather than the requirements of the MPAP. This provision is consistent with the Department's handling of permit applications deemed complete as specified at N.J.A.C. 7:7- 4.4(a)4. If after the application is deemed complete but during the application review period, the MPAP becomes effective, and an applicant prefers to provide public access in accordance with the approved MPAP, the applicant must withdraw the application and resubmit it with a new public access proposal. This is necessary both to ensure that the public is aware of the public access proposed by the applicant as part of the application, and because coastal

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permit decisions are governed by the 90-day permit application review requirements of N.J.S.A. 13:1D-9 et seq., making it impossible to subsequently provide notice of this change in the proposal and provide a permit decision within the mandatory time frames. Pursuant to N.J.A.C. 7:7-4.9(a), permit fees from the initial application may be credited to the resubmitted application provided the application is re-submitted within the applicable time frame.

N.J.A.C. 7:7E-8.11(l) requires that a municipality request review and approval from the Department of any changes it wants to make to a MPAP after the plan has been approved if the changes would affect the location or type of access to be provided, or would change the terms of provisions in the plan related to contributions in lieu of onsite access. Approval of these types of changes is required because they affect the substance of the plan upon which the Department's approval was based. In support of a request for a change to a plan, the applicant must provide the approved plan updated to reflect the proposed changes with an explanation of how the proposed changes affect the approved plan.

The Department is proposing at N.J.A.C. 7:7E-8.11(m) that MPAPs be valid for six years. Periodic expiration of the MPAP is necessary to assure that goals established in the originally approved plan, including any planned improvements in public access to be funded by contributions in lieu of onsite access, are progressing as anticipated. The periodic re-examination will provide the municipality and the Department with an opportunity to make any necessary adjustments to assure that the plan continues to fulfill its goal of assuring appropriate public access is provided. The six-year term will enable the MPAP to be reexamined concurrently with the municipality's reexamination of its Master Plan. In accordance with the Municipal Land Use Law, specifically N.J.A.C. 40:55D-89, the governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board. Therefore, this is an appropriate time for the municipality to reexamine and renew its MPAP with the Department.

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Proposed N.J.A.C. 7:7E-8.11(m)1 through 5 specifies the information that the municipality seeking renewal of an expiring Municipal Public Access Plan must provide to the Department. To renew a plan, at least six months before the plan expires the municipality must provide a progress report indicating the status of all projects undertaken in accordance with the plan. For projects that have not been undertaken as originally planned, the progress report must explain why the project has not progressed as planned and provide a new schedule for implementation. The progress report must also identify any desired changes to the plan; provide an accounting of the funds collected in lieu of onsite access and all expenditures of those moneys; and identify any problems encountered with the plan with suggestions on ways to remedy such problems. For the Department to renew the plan, it must find that the MPAP is achieving or making substantial progress toward achieving the public access goals as anticipated when it was originally approved. The Department plans to work with municipalities that need assistance modifying their plans to better meet the public access goals.

Proposed new N.J.A.C. 7:7E-8.11(n) contains the requirements for public access for developments proposed in municipalities that do not have an approved MPAP. The subsection is generally organized by type of development. In addition, the Department is providing factors it will consider when determining whether proposed public access is appropriate. These factors include the type of public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, the square footage of the proposed access area, and environmental impact/benefit. For example, if an applicant proposes to provide a swimming area in a location with dangerous currents, it would not be considered appropriate. However, a walkway with a fishing area may be more suitable.

Proposed N.J.A.C. 7:7E-8.11(n)1 contains the public access requirements for commercial development, with the requirements varying depending upon whether the development is classified as existing or new. For existing commercial development, which is defined to include proposed activities at a developed commercial property consisting of maintenance, rehabilitation, renovation, redevelopment, or expansion that

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remains entirely within the parcel containing the existing development, and with the cumulative increase in area covered by buildings, asphalt or concrete being 50 percent or less (expansion resulting in greater than a 50 percent cumulative increase in the area covered by buildings, asphalt or concrete is considered to be “new commercial development” subject to the requirements of proposed N.J.A.C. 7:7E-8.11(n)1ii), the Department is proposing, at N.J.A.C. 7:7E-8.11(n)1i, to require that existing public access be maintained, or equivalent access be provided onsite. This provision would allow existing public access to be relocated if necessary to accomplish the proposed project, but only if the proposed new onsite access is equivalent to the current access. Accordingly, flexibility is provided, but only where it is not allowed at a cost of public access being reduced. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming and passive recreation, in the same manner and by the same number of people as in the existing public access area. If there is no current public access, then there is no requirement to provide public access as part of an approval for rehabilitation, renovation, or an expansion of commercial development that remains within the parcel and does not exceed the cumulative limit on increase of the area covered by buildings, asphalt or concrete. It has been the Department’s experience that applicants have hesitated to do needed renovations or to rehabilitate dilapidated facilities, since doing so under the existing rules would trigger the need to provide potentially cost-prohibitive public access. Therefore, the Department believes that if there is no public access currently, it would be very difficult and costly for many applicants, without the acquisition of additional land, to provide new public access when a site is being rehabilitated, renovated or expanded. It is in the State’s best interest to encourage these activities.

For new commercial development, which is defined to include the conversion of an existing non-commercial use to a commercial use as well as changes to existing commercial development that would result in either greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving, or an expansion onto a parcel which was not part of the existing development, the Department is

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proposing at N.J.A.C. 7:7E-8.11(n)1ii that public access be provided onsite, at a minimum during normal operating hours. The Department is proposing that more than a cumulative 50 percent increase requires new public access because this is consistent with the Coastal Permit Program rules at N.J.A.C. 7:7-4.10 that require a new permit application for applicants proposing to increase the area covered by buildings, asphalt or concrete paving by more than 50 percent.

At proposed N.J.A.C. 7:7E-8.11(n)1iii, the Department is providing examples of acceptable types of public access. They include a public accessway located parallel to the shoreline with perpendicular access; a boat ramp, pier, fishing or other direct access to the waterway; a waterfront pocket park; public restrooms; and/or additional public parking. A “pocket park” is a small park accessible to the general public. Pocket parks are frequently created on a single vacant building lot or on small, irregular pieces of land. They may be created as a component of the public space requirement of large building projects and provide a green space to sit outdoors and conduct small scale activities such as would be associated with a tot-lot or fishing area. Additional public parking means parking to accommodate public access, beyond that needed to support the commercial development to be located on the site.

At N.J.A.C. 7:7E-8.11(n)2, the Department is proposing criteria for public access associated with residential development. Residential development is further divided into five categories.

Proposed N.J.A.C. 7:7E-8.11(n)2i addresses accessory development or structural shore protection at an existing residential development. In this case, existing access shall be maintained. If it is necessary to permanently impact the existing access in order to perform the activities, equivalent access shall be provided onsite. However, if there is no existing public access onsite, no public access is required. Similar to renovations at a commercial development described under N.J.A.C. 7:7E-8.11(n)1i, the Department believes that if there is no public access currently, it would be very difficult to provide new public access when a residence is simply adding an accessory development or undertaking shore protection because additional land is not being acquired. As stated

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previously, it has been the Department's experience that applicants have hesitated to do renovations or to undertake needed shore protection, since doing so under the existing rules would trigger the need for potentially cost-prohibitive public access. Therefore, the Department believes that if there is no public access currently, it would be very difficult and costly for many applicants, without the acquisition of additional land, to provide new public access when a site is being rehabilitated, renovated or expanded.

Proposed N.J.A.C. 7:7E-8.11(n)2ii applies to new residential development where the development consists solely of the construction of one single family home or duplex which is not in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8. In this case, no public access is required. Since the Department began regulating residential development of less than 25 units in 1994, it has never required public access with the construction of one single family home or duplex and is in not proposing to change that practice.

Proposed N.J.A.C. 7:7E-8.11(n)2iii applies to new residential development of more than one single family home or duplex or the conversion of any existing use to a residential use that has a total combined water frontage of 500 linear feet or less. Five hundred linear feet is approximately the length of one city block. Proposed N.J.A.C. 7:7E-8.11(n)2iii specifies the hierarchy that will be applied to determine the type of public access that must be provided for residential development subject to this provision, which may include either onsite or offsite access, depending upon the circumstances applicable to a particular site.

In accordance with N.J.A.C. 7:7E-8.11(n)2iii(1), public access must generally be provided onsite. Onsite public access may consist of the same components described N.J.A.C. 7:7E-8.11(n)1iii for commercial development (that is, accessway, boat ramp, pocket park, restrooms, parking).

However, the rule recognizes that there may be situations where onsite public access may not be feasible. Proposed N.J.A.C. 7:7E-8.11(n)2iii(2) specifies that if the applicant demonstrates that onsite public access is not feasible, based upon the size of the

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site, character of the waterway, and environmental impact or benefits, alternative equivalent offsite public access may be allowed. If equivalent offsite access is allowed under this subparagraph, the access must be both on the same waterway and within the same municipality as where the proposed activity is proposed. In determining whether the proposed offsite access will be equivalent, the Department will consider the type of public access available (for example, if swimming access is available onsite then swimming should be available at the offsite location), cost, square footage and environmental impact or benefit of the offsite access and compare that to what could be provided onsite. Offsite public access on the same waterway within the same municipality as the residential development is important in assuring that the alternate public access is spatially proximate to the area where onsite public access would have been required so that those most likely to be impacted by access not being provided onsite (that is, those within the community where the site on which the proposed activity is located) are likely to be able to take advantage of the alternate access. Allowance of offsite alternative public access reflects the Department's belief that residential development which has limited access to a waterway (in this case, 500 feet or less of waterway frontage), may likewise have more limited onsite options for public access. In this situation, the Department believes that offsite access in the immediate vicinity of the development may actually result in better access opportunities for the public.

Finally, the rules recognize that, where it is not feasible to provide public access onsite, there may be situations in highly developed waterfront areas where other offsite options for public access in the same municipality may be non-existent. If no public access can be provided in the same municipality as where the development is occurring because there is no undeveloped land available to accommodate the types of public access necessary to satisfy the requirements of this section, the Department is proposing at N.J.A.C. 7:7E-8.11(n)2iii(3) to allow an applicant to provide public access on the same waterway, in a neighboring municipality where the access is consistent with the neighboring municipality's MPAP or if there is no MPAP, the access is located and designed to be consistent with local requirements including local zoning and ordinances.

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Proposed N.J.A.C. 7:7E-8.11(n)2iv applies to new residential development of more than one single family home or duplex or the conversion of any existing non-residential use to a residential use, where the development or conversion has a total combined water frontage of more than 500 linear feet. In this case, the Department is requiring that public access be provided onsite in the same manner as previously described for proposed commercial development at N.J.A.C. 7:7E-8.11(n)1iii above. Due to the extensive linear distance included with a proposed development falling within this category, the Department believes that onsite access is necessary and can be accomplished as part of the planning for the proposed development. Consequently, the Department is not proposing an offsite option.

Proposed N.J.A.C. 7:7E-8.11(n)3 addresses industrial and public development. Both of these development types are defined by statute (see the Coastal Area Facility Review Act at N.J.S.A. 13:19-3; see also proposed N.J.A.C. 7:7E-1.8). The Department is proposing that public access at these types of development follow an approach similar to that proposed for commercial development.

At N.J.A.C. 7:7E-8.11(n)3i, the Department proposes that in those cases where public access exists on a site and an existing industrial or public development is proposed to be maintained, rehabilitated, renovated, redeveloped, or expanded entirely within the parcel (as defined at N.J.A.C. 7:7E-1.8) containing the current development, existing access must be maintained, or equivalent onsite access be provided. Equivalent public access shall include access that provides for opportunities to participate in the same activities such as fishing, swimming, or passive recreation, in the same manner and by the same number of people as in the existing public access area. In those cases where there is currently no public access, the Department is not proposing to require public access for the same reasons it is not required for existing commercial development undergoing rehabilitation, renovation, redevelopment or expansion. That is, it has been the Department's experience that applicants have hesitated to do needed renovations or to rehabilitate dilapidated facilities, since doing so, under the existing rules, would trigger the need to provide potentially cost-prohibitive public access. Therefore, the Department

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believes that if there is no public access currently, it would be very difficult and costly for many applicants, without the acquisition of additional land, to provide new public access when a site is being rehabilitated, renovated or expanded.

At N.J.A.C. 7:7E-8.11(n)3ii, for new industrial and public development, the Department is proposing that onsite public access be provided during normal operating hours unless it would result in a risk of injury from hazardous operations, or substantial permanent obstructions that cannot be overcome. “New industrial or public development” includes development on a lot or lots that were not part of the parcel containing the existing development, as “parcel” is defined at N.J.A.C. 7:7E-1.8. In cases where onsite public access cannot be provided, equivalent public access shall be provided off site, on the same waterway, and within the same municipality, in accordance with proposed N.J.A.C. 7:7E-8.11(n)3iii. Finally, the rules recognize that, where it is not feasible to provide public access onsite, there may be situations in highly developed waterfront areas where other offsite options for public access in the same municipality may be non-existent. If no public access can be provided in the same municipality as where the development is occurring because there is no undeveloped land available to accommodate the types of public access necessary to satisfy the requirements of this section, the Department is proposing at N.J.A.C. 7:7E-8.11(n)3iv to allow an applicant to provide public access on the same waterway, in a neighboring municipality where the access is consistent with the neighboring municipality’s MPAP or if there is no MPAP, the access is located and designed to be consistent with local requirements including local zoning and ordinances. The Department again will consider the type of public access available (for example, if swimming access is available onsite then swimming should be available at the offsite location), cost, square footage and environmental impact or benefit of the offsite access and compare that to what could be provided onsite when determining whether proposed offsite access is equivalent to that which would be provided onsite.

N.J.A.C. 7:7E-8.11(n)4 addresses the public access requirements for homeland security facilities. N.J.A.C. 7:7E-8.11(n)4i provides that existing facilities which undergo maintenance, rehabilitation, renovation, redevelopment, or expansion on the same parcel

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of land as the existing facility, as the term “parcel” is defined at N.J.A.C. 7:7E-1.8(a), must maintain existing public access onsite or provide alternative access either onsite or offsite on the same waterway and within the same municipality. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming, and passive recreation, in the same manner and by the same number of people as in the existing public access area. Where there is no existing onsite access, no further access is required for this type of development.

N.J.A.C. 7:7E-8.11(n)4ii addresses new homeland security facilities, which includes conversion of a facility that would not previously be considered a homeland security facility to a use that results in its classification as a homeland security facility and expansion of an existing homeland security facility onto areas not within the parcel containing the existing development. New facilities may provide public access offsite or onsite at the applicant’s discretion. Although in most cases the Department assumes that homeland security facilities would not include onsite public access, the Department does not want to prevent an applicant for a homeland security facility from providing onsite public access if the applicant deems it viable. Finally, like the provisions for public access required for residential and industrial development, the Department will assess equivalency by considering the type of public access available (for example, if swimming access is available onsite, then swimming should be available at the offsite location), cost, square footage and environmental impact or benefit of the offsite access and compare that to what could be provided onsite.

Proposed N.J.A.C. 7:7E-8.11(n)5 provides the requirements for public access at ports. If existing public access would be eliminated by the proposed development, then alternative access must be provided onsite, unless continued onsite access would pose an unacceptable risk of injury from proposed hazardous operations or substantial permanent obstructions that cannot be avoided. If such an unavoidable risk of injury is demonstrated to exist if public access were to continue to be provided onsite, equivalent public access must be provided offsite. Since port activities are already providing water access for navigation and commerce, neither existing ports nor new ports are required to

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provide public access unless the proposed activities or new port would eliminate existing public access.

Proposed N.J.A.C. 7:7E-8.11(o) addresses the criteria for public access at marinas. Marinas are not grouped with other types of development because they will not be part of municipal access plans in accordance with N.J.A.C. 7:7E- 8.11(c)3 and therefore will in all cases be subject to the Department's public access criteria in this rule. Similar to previously described development types, existing marinas proposing maintenance, rehabilitation, renovation, redevelopment, or expansion within the parcel which contains the existing development, will not be required to provide new public access. However, proposed N.J.A.C. 7:7E-8.11(o)i requires that, if existing public access is proposed to be impacted, it must be replaced onsite with equivalent public access except in accordance with N.J.A.C. 7:7E-8.11(o)iii when the marina development contains a beach area. Equivalent public access shall include access that provides for opportunities to participate in the same activities such as fishing, swimming, and passive recreation, in the same manner and by the same number of people as in the existing public access area.

For new marina development, as described at N.J.A.C. 7:7E-8.11(o)ii, access must be provided onsite at a minimum during normal operating hours. Under this rule, "new marina development" includes changes in existing development that would result in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving. Additionally considered to be "new marina development" is development of areas not within the parcel containing the existing development for which a coastal permit was obtained, or if the marina was not previously permitted because a coastal permit was not required, development on a lot or lots which are purchased after (the date of this proposal).

Proposed N.J.A.C. 7:7E-8.11(o)iii requires access along and use of the beach if such areas are part of a marina development and also prohibits any activities that have the effect of discouraging or preventing the exercise of public trust rights in accordance with N.J.A.C. 7:7E-8.11(u).

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Finally, N.J.A.C. 7:7E-8.11(o)iv requires that applicants for new marinas, as described at N.J.A.C. 7:7E-8.11(o)ii above, prepare a plan for public access. Such a plan must include a site plan indicating the type and location of public access and any marina areas closed to public access due to hazards; and the types of public access to be included at the marina. The proposed paragraph additionally includes a reference to the same list of options at N.J.A.C. 7:7E-8.11(n)liii that may be included in the marina's public access plan. In addition, the marina applicant is required to provide a listing of the normal operating hours so that the Department can review them with the applicant, and include the hours for public access in the marina public access plan.

Once the Department approves a marina public access plan, proposed N.J.A.C. 7:7E-8.11(o)v provides that any changes to the plan that would result in a change to the public's ability to use the public access at the marina require review by the Department. N.J.A.C. 7:7E-8.11(o)v specifies the information to be submitted in support of such a proposed change, including a description of the impacts of the proposed changes on public access. This information will be used by the Department to determine if the proposed change has an unacceptable impact on public access.

Proposed N.J.A.C. 7:7E-8.11(p) contains the public access requirements for pier development that is not subject to the requirements of the Hudson River Waterfront area at N.J.A.C. 7:7E-3.48 or the Atlantic City rule at N.J.A.C. 7:7E-3.49. The Hudson River Waterfront area and Atlantic City have specific public access requirements for pier development. The Department is proposing that the public access requirements for pier development be provided in accordance with the type of development being proposed; that is, commercial, residential, industrial/public, homeland security or ports (see N.J.A.C. 7:7E-8.11(n)1, 2, 3, 4 or 5, respectively).

Proposed N.J.A.C. 7:7E-8.11(q) addresses public access requirements for permit applications that include beach and dune maintenance activities. Applicants conducting beach and dune maintenance are required to maintain existing public access or provide equivalent public access onsite. As with other types of development that would displace public access, equivalent public access shall include access that provides for

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opportunities to participate in the same activities and in the same manner and by the same number of people as in the existing public access. For example, where there is a need to reconstruct a dune walk-over structure at a street end, provisions must be made to allow those seeking to access the beach to do so via an alternate route while the walk-over structure is in the process of being repaired/replaced regardless of whether it is a temporary or permanent loss of access.

Proposed N.J.A.C. 7:7E-8.11(r) addresses public access requirements for municipal projects located on a beach adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay, and/or an estuary connected to the same waterbodies. Municipal applicants in these areas proposing shore protection projects that include guidance and/or participation from the Army Corps of Engineers (ACOE) are required to provide public access in accordance with the ACOE guidance. Accepting Federal funding requires the permittee to provide public access. In fact, the ACOE Planning Guidance Notebook Section IV– Hurricane and Storm Damage Prevention (CECW-P Engineer Regulation 105-2-100, April 22, 2000), states in section E-24d., Public Use and its Relation to Federal Participation, “(3) Access. Provision of reasonable public access rights of way, consistent with attendance used in benefit evaluation is a condition of Corps participation. Reasonable access is access approximately every one-half mile or less.” In practice, the ACOE feasibility study determines how much access should be required and the location where it should be provided.

Existing N.J.A.C. 7:7E-8.11(g) is recodified as N.J.A.C. 7:7E-8.11(s) with no changes. Existing N.J.A.C. 7:7E-8.11(h) is recodified as N.J.A.C. 7:7E-8.11(t). In addition, the Department is proposing to delete the reference to N.J.A.C. 7:7E-8.11(p) relating to Shore Protection funding, and N.J.A.C. 7:7E-8.11(q) relating to Green Acres funding because those sections have been proposed for deletion.

Existing N.J.A.C. 7:7E-8.11(i) has been recodified as N.J.A.C. 7:7E-8.11(u) with an amendment that cross-references the section describing public trust rights (N.J.A.C. 7:7E-3.50, Lands and water subject to public trust rights). The Department notes that although N.J.A.C. 7:7E-8.11(u) prohibits individuals from discouraging the exercise of

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public trust rights by requiring photographic identification for access, the rules do not preclude commercial concerns from verifying identification for age restricted activities such as the purchase of alcohol, cigarettes or participation in gambling activities. The content of existing N.J.A.C. 7:7E-8.11(j) has been deleted because the parking requirement is no longer needed or consistent with the remainder of the public access rule requirements.

Existing N.J.A.C. 7:7E-8.11(k) has been recodified without change as N.J.A.C. 7:7E-8.11(v).

Proposed N.J.A.C. 7:7E-8.11(w) contains the criteria for building a public accessway if that is the chosen option for public access at N.J.A.C. 7:7E-8.11(n). The Department is proposing that a walkway be at least 10 feet wide, and free of obstructions to public access. Amenities such as public benches, litter or recycling receptacles, and lighting fixtures are provided to enhance public access and therefore will not be considered obstructions to public access. The proposed 10-foot wide walkway is narrower than the 16-foot walkway width required as part of the Hudson River Walkway, because it is a standard to be used statewide and waterway characteristics can vary greatly. Walkways may be used to satisfy requirements for projects that are smaller in scope than those in the Hudson River vicinity. The proposed ten-foot width is currently utilized as the standard width for walkways required at two and three unit developments at existing N.J.A.C. 7:7E-8.11(f)5. It is anticipated that this minimum width will provide sufficient access while accommodating site-specific constraints that may be encountered.

Existing N.J.A.C. 7:7E-8.11(l), which requires the provision of fishing access to the maximum extent practicable has been deleted. However, the Department has included the provision of fishing access as part of the public access options provided at N.J.A.C. 7:7E-8.11(n). The Department believes that fishing access should be one of several options that can be considered by applicants when determining how best to provide public access for a development.

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Existing N.J.A.C. 7:7E-8.11(m) has been recodified as N.J.A.C. 7:7E-8.11(x). In addition, internal cross-references are corrected to reflect the recodification of this subsection and the references to requirements for the Shore Protection program and Green Acres funded projects have been deleted for the reasons previously described.

Existing N.J.A.C. 7:7E-8.11(n) has been recodified as N.J.A.C. 7:7E-8.11(y) and the reference to requirements for Shore Protection at N.J.A.C. 7:7E-8A.4(c) and Green Acres funded projects at N.J.A.C. 7:7E-8A.4(d)1 and 2 have been deleted for the reasons previously described. In addition, the Department is proposing to recodify the requirements associated with filing a conservation restriction from N.J.A.C. 7:7E-8A.4 to N.J.A.C. 7:7E-8.11(y)1 through 4. These requirements include the use of a form of document approved by the Department; proper recording of the restriction; that the restriction run with the land and be binding on successors in interest; specification of the appropriate government entity with whom the restriction must be recorded; and the requirement to provide proof of filing to the Department before project construction commences. For clarity, the recording requirement has been separated from the timing for the submittal of proof of filing to the Department.

As previously stated, existing N.J.A.C. 7:7E-8.11(o) has been recodified in its entirety to N.J.A.C. 7:7E-8.11(a) to ensure that it is clear that the Department's rules shall not be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights.

Existing N.J.A.C. 7:7E-8.11(p) through (q) have been deleted because they describe public access requirements that are being replaced by this proposal.

Existing N.J.A.C. 7:7E-8.11(r) has been recodified without amendments as N.J.A.C. 7:7E-8.11(z).

At N.J.A.C. 7:7E-8.12, the Department is amending the scenic resources and design rule by adding a new subsection. Proposed N.J.A.C. 7:7E-8.12(f) will allow all governmental agencies, from the Federal level through the municipal level, to be exempt from the setback requirements at N.J.A.C. 7:7E-8.12(d)2 for structures that are more than

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fifteen feet in height if certain conditions are satisfied. The setback requirements are intended to prevent adverse effects on the scenic resources of the coastal zone by encouraging visually compatible uses and maintaining visual access of the waterfront by the public. The Department believes that projects undertaken by government agencies are undertaken in the public interest and therefore, it is appropriate to exempt government entities from the setback requirements provided that the development incorporates design elements that enhance either visual or physical public access to the waterfront in a manner that exceeds the public access afforded by strict adherence to the setback requirements.

The Department is proposing to delete in its entirety, Subchapter 8A, Information required to demonstrate compliance with the public trust rights rule, N.J.A.C. 7:7E-8.11; conservation restrictions and public access instruments, because the majority of the content is no longer necessary in light of the above summarized proposed changes. However, as previously stated, the provisions relating to requirements applicable to conservation restrictions associated with public access at N.J.A.C. 7:7E-8A.4 have been retained at proposed N.J.A.C. 7:7E-8.11(y) with amendments as described above.

Social Impact

Public access to, and use of, tidal waterways and their shores in New Jersey for the benefit of all the people is a protected right. State and Federal courts recognize that modern uses of tidal waterways and their shores include recreational uses such as swimming, sunbathing, fishing, surfing, walking and boating. By ensuring that new public access is provided, as appropriate, or that existing public access is protected, maintained, and in some cases improved, the Department is furthering the goals of the Coastal Zone Management rules, and is providing a positive social impact.

The proposed rule amendments at N.J.A.C. 7:7E-8.11 clarify the public's right to access and use tidal waterways and their shores, and incorporate options that can be used

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to protect these rights when development is proposed on, and adjacent to, the State's tidal waterways and their shores.

The proposed amendments will continue to require public access in appropriate situations when development is proposed along tidal waterways and their shores. However, in order to strike a better balance between public access rights, public safety and the conduct of various desirable water-dependent uses, the amendments allow alternative methods of access based upon the type of use proposed (for example, commercial, industrial or residential use), and whether the development is new or part of an existing development.

In addition, the proposed rules provide municipalities with the option to develop a local municipal public access plan suited specifically to the needs of that community. If and when a municipal public access plan is completed, and the Department deems it consistent with public access goals, Department-approved development along tidal waterways and their shores will be required to provide public access consistent with the municipal plan.

Therefore, the proposed rules will have a positive social impact by providing flexibility that ensures that public access is provided, while recognizing that it may be appropriate for different types of development to provide different types of public access, and by allowing municipalities to develop plans that tailor public access to local conditions and community needs.

The proposed rule amendments which would redefine amusement pier to include bars, restaurants, and other entertainment venues will also provide a positive social impact. Allowing these additional businesses to locate on piers will make such facilities viable for year-round use and may encourage the rehabilitation of existing, dilapidated piers.

The proposed rule amendments which will allow underground utilities, floor decking, open drink and food concession stand shells, and stage shells to remain in place year-round will have a neutral social benefit because, although it saves the commercial

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entity from the need to remove this infrastructure out of season, the benefit to the public will remain seasonal.

Finally, the proposed rule amendments that will exempt government agencies from the setback requirements of the scenic resources and design rules, provided that the development contains design elements that enhance physical or visual public access to the waterfront beyond that which would be afforded by strict compliance with the setback provisions, will have a positive social impact because it will allow the Department to consider governmental projects that will result in increased public access opportunities regardless of whether the project satisfies the existing setback requirements.

Economic Impact

The proposed amendments to the public access rules, which include an opportunity for communities to establish their own public access plans, and that specify by development type whether public access is required and options for providing public access, are a cost-effective way of achieving an important policy objective, namely the provision of public access to lands and waters subject to public trust rights. The universe of facilities and locations subject to public access is varied, and thus the measures needed to provide such access will depend on the type of facility and the location involved. Given these facts, no one approach to providing public access would be suitable in all situations. Recognizing this, the proposed amendments do not mandate a specific set of measures but rather provide a range of options, subject to oversight by the Department. For example, proposed N.J.A.C. 7:7E-8.11(n) lists five different measures that can be used to satisfy the public access requirement including: public accessways; boat ramps; piers or other direct access; waterfront pocket parks; public restrooms; and/or additional public parking. These measures have substantially different implementation costs. Thus, the rules will allow the regulated community to choose the way that public access requirements are satisfied based on budgetary constraints.

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Local communities typically have detailed knowledge of public access needs, and therefore are in the best position to select the most cost-effective means to achieve the desired objective. Recognizing this, the proposed amendments at N.J.A.C. 7:7E-8.11(d) encourage local authorities to create their own municipal public access plans (MPAPs). The work involved in creating such plans can be performed by municipal employees or by outside consultants engaged by municipalities. Municipalities or their consultants can also request assistance from the Department. The Department believes that its existing staff is adequate to work extensively as part of their regular duties with all affected municipalities to create MPAPs, and accordingly there should be little or no additional cost to municipalities for plan preparation.

The cost of plan implementation will depend on the measures selected by the municipality for inclusion in the plan and on local and site-specific circumstances; therefore, no generalizations can be made regarding such costs. Some municipalities may already have a considerable level of public access and may require little or no incremental expenditure. Some municipalities may adopt plans that require the acquisition of privately-owned land, and such plans may be more expensive to implement. However, the land acquisition costs will be funded by contributions made as new development is proposed in a community's waterfront area. Since the cost of land varies from municipality to municipality and from neighborhood to neighborhood within municipalities, it is impossible to generalize regarding the cost of such land acquisition.

The proposed rules require that the MPAP be included in the municipality's approved Master Plan. The preparation of an MPAP as an element of a municipal master plan will provide a level of predictability for municipalities and land owners subject to these proposed amendments. This predictability is expected to be especially important for new development projects, for which costs must be estimated in advance of the design work, land acquisition, and construction.

For municipalities without approved MPAPs, developers of new facilities subject to these proposed amendments will need to prepare and submit to the Department their own individual public access proposals. This requirement will impose an added cost for

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proposal preparation on such entities, but that cost is not expected to be significant compared to the other costs of such projects. While application contents may vary depending upon type of public access to be provided, the proposal does not increase the information necessary or corresponding cost to demonstrate compliance with public access requirements in the existing rule. The overall cost of implementing such proposals will depend on local circumstances and on the specific measures to be implemented and cannot be estimated in advance. The Department believes it is reasonable to expect that such entities will employ the most cost-effective measures consistent with their public access obligations unlike currently, where all applicants are required to provide the same type of access without consideration of costs.

Proposed N.J.A.C. 7:7E-8.11(b) requires that existing public access must be maintained to the maximum extent practicable. Where compliance with this provision involves prohibiting new impediments to existing public access, there may be little or no incremental cost. Where constructed facilities such as walkways must be maintained, the cost of such maintenance will depend on the nature and extent of the facilities involved. The Department believes it is reasonable to expect that property owners and municipalities will choose the most cost-effective measures to maintain safe public access.

As noted above, the costs of implementing the proposed amendments are strongly influenced by the type of development subject to the public access requirement and the location. Many of the specific provisions of the proposed amendments exempt existing facilities that are proposing rehabilitation, renovation or expansion activities, from the requirement of providing new public access, and therefore require creation of new public access only for new facilities, or for those for which expansion is proposed upon land that is added to the parcel after (the date of this proposal) (see N.J.A.C. 7:7E-8.11(n)). The type of development (commercial, residential, industrial, etc.) will determine what is considered a new facility. Instead, existing facilities satisfying the eligibility conditions are required to protect and maintain existing public access or provide equivalent public access if the proposed activity impacts existing public access. Such exemptions limit or

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eliminate the cost to owners of existing facilities, who are proposing to expand within the same lot or lots or parcel, and will limit the overall cost of implementation. Since there is no inventory of such existing facilities, the total costs avoided through such exemptions cannot be estimated since they involve determining what measures existing facilities would undertake if they were not exempt.

Although specific costs will vary for providing the various public access options at N.J.A.C. 7:7E-8.11(n) for new developments and the expansion of existing developments outside of the same lot or lots or parcel, the costs can be categorized. Each of the following options for providing public access will either occur on land already owned by the applicant, as part of the proposed development, or will require the purchase of land for public access. Therefore, the land acquisition cost may be an additional and significant cost added to each of the following examples.

The cost associated with building a public accessway parallel to the shoreline with perpendicular access will be the cost per square-foot for walkway construction. Department research shows that the cost for materials to be used in walkway construction can vary from \$5.00 to \$9.00, if using concrete, to \$5.00 to \$17.00 (or more) for the use of a wood or composite decking. Actual construction costs will vary.

The costs associated with building a boat ramp, pier, fishing or other direct access to the waterway will be the cost of construction and materials. It may also be necessary to obtain a riparian lease or license if one has not yet been obtained. The cost of a riparian lease or license will vary with the location and extent of the area in question.

If the chosen public access method is to provide a waterfront pocket park, the costs will include those necessary to furnish amenities necessary to provide a green space to sit outdoors and conduct small scale activities such as would be associated with a tot-lot or fishing area, such as playground equipment, benches and signs.

If restrooms are to be provided, the costs will include construction, the provision of utilities including electricity, water and sewer, bathroom supplies, and cleaning and maintenance.

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For parking areas, the costs would include grading if needed, and the cost associated with the construction materials such as gravel, shells or paving.

In general, private property owners subject to the proposed amendments are required to provide onsite public access unless exempted. Proposed N.J.A.C. 7:7E-8.11(f) authorizes municipalities with MPAPs to design the MPAP to allow property owners to make cash contributions in lieu of providing onsite public access under circumstances specified in the MPAP and provides a formula for calculating the amount of such contributions. The Department believes that it is reasonable to expect that many municipalities will incorporate a cash contribution component within the MPAP. The formula itself and the fact that the values of some of the parameters are fixed in advance will help provide some certainty to property owners, but other elements of the formula are, and by their nature must be, site-specific, for example, the land acquisition costs. It is therefore not possible to estimate the aggregate cost of such in-lieu contributions. The Department notes that the use of equalized assessed value rather than appraised values as a factor in determining land acquisition costs for land avoids the significant cost of appraisals that would result if land acquisition costs were based upon appraised land values.

Other provisions affecting overall economic impact of these rules can be summarized as follows.

The Department is amending the definition of “amusement pier” at N.J.A.C. 7:7-1.3 to include bar and restaurant establishments and entertainment venues. While bars and restaurants were previously excluded from the definition, the Department believes that including these uses, as well as entertainment uses, will expand the public’s opportunity for both visual and physical access since the piers would now be viable for year-round use. Also, expanding the definition to include the additional uses will make the rehabilitation of existing dilapidated piers economically attractive which will lead to increased investment as well as increased use of the shore areas.

The proposed amendment to the general permit at N.J.A.C. 7:7-7.6, for beach and dune maintenance activities will limit the use of the general permit to municipal

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applicants that have an approved municipal public access plan. Municipalities without approved municipal public access plans will need to apply for an individual permit. Individual permits can be more costly because they require a higher application fee, additional public notices, and higher application preparation costs. For example, the application fee alone, without notices or consultant/engineering fees for a general permit is currently \$600.00 whereas the fee for an individual permit starts at a base fee of \$3,500.00 plus 1.2 percent of construction costs. The higher costs can be avoided if the municipality obtains an approved municipal public access plan.

The proposed amendment to the general permit at N.J.A.C. 7:7-7.26, for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units, that would permit seasonal-use structures to remain in place on a year-round basis (except in case of emergency) will reduce or eliminate the costs of dismantling, transporting, storing, and reassembling such structures in years where an emergency requiring removal is not declared. Since the provision is permissive rather than mandatory, owners of such structures may still choose to remove them voluntarily during the off-season.

Proposed amendments at N.J.A.C. 7:7E-8.11(p) provide that piers on or over beaches must provide public access from the pier to the beach and vice versa. This would impose an added cost on piers without such access, but the Department believes that such costs will be minimal since the access could consist simply of a set of stairs with handrails, and in any case represents a necessary expenditure for ensuring public access to the beach.

The recodification of provisions specifying the requirements for conservation restrictions will not result in any economic impacts. Those provisions will continue to specify the formal legal requirements for such restrictions. As they are not proposed to be amended, the recodification will not create any additional costs. Those provisions merely specify the formal legal requirements for such easements and create no added costs. Filing a conservation easement may result in some cost if the applicant chooses to hire an attorney to review, prepare, or file the conservation easement. However, costs

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related to this continuing requirement should be minimal as the Department provides standard forms that should not be altered, to be used by all applicants.

The Department does not believe that the proposed amendments overall will have any impact on property values in regulated areas. The requirement for public access represents previously established law, and the proposed amendments merely specify requirements for providing such access. The Department believes that it is reasonable to expect that the least intrusive measures will be used consistent with the clear legal obligation to provide public access.

The principal benefit of the proposed amendments is that they outline rules for providing public access and do so in what the Department believes will be the most cost-effective manner. Expenditures on public access also constitute an investment in New Jersey's coastal tourism industry, which makes a major contribution to the State's economy and supports thousands of jobs. Public access to New Jersey's beaches is an important component of that industry, and the proposed amendments will confirm and strengthen the continuation of that access. The areas of the State that benefit most from coastal tourism are those same communities subject to the proposed amendments, and therefore any additional costs borne by development in those communities will be offset by the preservation and expansion of the local tourism economy. Therefore, the proposed amendments will provide the most cost-effective means of meeting the State's public access obligation and will also provide support for the State's economically vital coastal tourism industry.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for

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development in the coastal zone; rather it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R. Part 923. The guidelines do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. The guidelines simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the Department has concluded that the proposed amendments do not exceed any Federal standards or requirements of the Federal Coastal Zone Management Act.

Many shore protection and beach nourishment projects subject to the new rules and amendments at N.J.A.C. 7:7E-8.11(r) will be conducted through a joint funding agreement between the State of New Jersey and the United States Army Corps of Engineers (Corps). These agreements often include local government as well. Such projects are authorized by Congress through Federal Water Resources Development Acts, generally passed annually. In a document entitled ACOE Planning Guidance Notebook Section IV– Hurricane and Storm Damage Prevention (CECW-P Engineer Regulation 1105-2-100, April 22, 2000) the Corps establishes standards for Federal participation in shore protection, paramount among them the requirement for public use of the shore protection projects. These Federal standards require that the shores be available for public use on equal terms to all, and for a reasonable fee. The standards cite sufficient parking facilities for the general public located reasonably nearby and with reasonable public access to the project, as requirements. The standards state that parking should be provided every one-half mile or less. The proposed amendments require the same Federally-established maximum distance of one-half mile between access points for projects to be conducted under the guidance of, and with participation by, the ACOE. Therefore, the proposed rules are as stringent as, but do not exceed, Federal standards for public access.

Environmental Impact

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The proposed amendments to the public access requirements do not affect the type, quantity of, or ability to construct, development proposed on, or adjacent to, the State's tidal waterways and their shores. Development projects, of which public access is a condition, must satisfy all applicable environmental standards of the Coastal Zone Management rules. Further, the rules continue to provide that public accessways and public access areas located in natural areas along tidal waterways be designed to minimize impacts to habitats, vegetation and water quality. Regardless of whether public access is provided in accordance with a municipal public access plan or in accordance with the Department's rule criteria, the proposed amendments are not expected to have either a positive or negative environmental impact

Jobs Impact

The Department does not anticipate any measurable impacts on employment from the proposed amendments. Some temporary, part-time, or seasonal jobs may be created in some communities to construct, operate and maintain public access facilities, and there may be some limited opportunities to advise municipalities and property owners on the design of public access facilities and the creation of MPAPs. In 2008, the last year for which statistics are available, the travel and tourism industry in New Jersey contributed \$38.8 billion in economic activity and provided 443,094 jobs (see, Apr 2-09 2008 Tourism Expenditures Reach \$38.8 Billion; State of New Jersey, Department of State; www.state.nj.us/state/secretary/center/news/approved/090406_a.html). Moreover, the tourism industry is dependent in part on the ability of tourists to access and use tidal waterways and their shores for activities such as boating, fishing, swimming and sunbathing. Therefore, the proposed amendments will help strengthen the base of the State's coastal tourism industry, which is a major employer in New Jersey.

Agriculture Industry Impact

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Agriculture located adjacent to tidal waterways will be subject to the proposed rules and amendments if conducting a development activity that requires a coastal permit. Aquaculture activities which take place waterward of the mean high water line generally require a waterfront development permit. Aquaculture activities which take place upland of the mean high water line are regulated as industrial development within the CAFRA zone and up to 500 feet inland when outside the CAFRA zone.

The proposed amendments do not affect whether a project requires a coastal permit. Rather, the proposed amendments establish public access requirements based upon the type of development proposed. For example, in the existing rules, an industrial development along a tidal waterway would need to provide public access in the form of a walkway onsite. The proposed amendments do not mandate a specific set of measures but rather provide a range of options, subject to oversight by the Department. Therefore, the proposed rule amendments will have either no new impact, from the existing rules, or may have a positive impact since the proposed rules will allow the regulated community to choose the way that public access requirements are satisfied based on budgetary constraints.

The proposed rule amendments have little or no impact on the agriculture industry. The current rules already require public access as a condition of permit approval in most cases.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that some of the builders and property owners that may be affected by the proposed rule amendments may be “small businesses” as defined in the Act. The Department has determined that the amendments will not impose additional reporting or recordkeeping requirements on small businesses, nor increase the

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need for professional services. The proposed new rule and amendments will apply to anyone proposing a regulated activity along a tidal waterway within the coastal zone.

The proposed amendments do not affect whether a project requires a coastal permit. Rather, the proposed amendments establish public access requirements based upon the type of development proposed. Consequently, if a small business proposes a new development to be located on or along a tidal waterway, they will be required to provide public access. While provision of public access imposes a cost on small businesses, the costs will vary depending upon the type of public access to be provided. Because these requirements are established to ensure that development is conducted in a manner that preserves the public right to access and use tidal waterways and their shores, lesser requirements are not proposed for small businesses.

Smart Growth Impact

Executive Order No. 4(2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan).

The proposed rule amendments further numerous statewide policies of the State Plan. Notably, the State Plan policy for coastal resources contains a public access policy. The State Plan policy mandates the promotion of recreational opportunities and public access, and encourages tourism along the oceanfront, bayfront and rivers of the coastal area. Further, the open space and recreational lands policy of the State Plan advocates preservation of open space and waterway corridors. The State Plan includes an urban revitalization policy that calls for improved access to waterfront areas, and contains a policy for infrastructure investment that recommends enhancement of tourism by capitalizing on the State's natural resources and recreational amenities. Finally, the State Plan policy on Historic, Cultural, and Scenic Resources provides that new development

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should be compatible with scenic values and provide passive and active recreational opportunities. By ensuring through the proposed rule amendments, that public access is provided when new development is approved, and that existing public access is protected, maintained, and in some cases improved, the Department is furthering the goals of the State Plan.

In addition, because the proposed amendments provide alternative methods of access based upon the type of use proposed (for example, commercial, industrial or residential use), they may make it easier and more desirable to provide public access, consistent with goal number seven of the State Plan to preserve and enhance areas with scenic, open space and recreational value. Further, because municipalities have the option to develop a local municipal public access plan suited specifically to the needs of that community, the proposed rules are also consistent with goal number eight of the State Plan since the amended rules encourage sound and integrated planning. Therefore, the proposed rule amendments comport with the goals of smart growth and implementation of the State Plan as required in Executive Order No. 4 (2002).

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments for purposes of determining their impact, if any, on the affordability of housing. The current rules already require public access as a condition of permit approval in most cases. Further, the public access requirement does not apply to single family homes or duplexes, but only to those that are part of a larger, residential subdivision where public access is required either on or off site where there is 500 linear feet or less of water frontage and onsite where there is more than 500 linear feet of water frontage. The proposed rules provide greater flexibility in how to provide public access enabling a developer to consider and include public access requirements in development plans. Therefore, the Department believes there is an extreme unlikelihood that the proposed rules would evoke a change in the average costs associated with housing.

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Smart Growth Development Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments and new rules at N.J.A.C. 7:7 and at N.J.A.C. 7:7E for purposes of determining their impact, if any, on smart growth development.

The existing rules, which uniformly required public access for all proposed development, have not caused a change in housing production within planning areas 1 or 22, nor have they had any apparent impact on the availability of affordable housing. The proposed amendments may lead to some increase in housing production in municipalities that are located within Planning areas 1 or 2 or within Designated Centers since the proposed amendments vary the requirement for public access by the type of proposed development and in the case of residential development, by the number of units and linear feet of water-frontage at a development site. For example, in the existing rules, a residential development along a tidal waterway would need to provide public access in the form of a walkway onsite, regardless of the size of the site or which area of the coast it was located on. In the proposed amendments, if the residential development is located within planning areas 1 or 2 or within Designated Centers in a municipality with an approved MPAP, public access requirements will be in accordance with the needs of the specific municipality as specified in the MPAP. Therefore, if a municipality determines that more housing is needed, affordable or otherwise, the MPAP may be drafted in such a manner as to require offsite public access or a monetary contribution to a public access fund for residential developments thereby potentially increasing the number of residential units that could be constructed on a given site.

In municipalities located within planning areas 1 or 2 or within Designated Centers, without an approved MPAP, the Department will continue to require residential developments to provide public access. However, there will be flexibility in the form of the public access required. It is unlikely that in those municipalities without an approved

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MPAP the proposed amendments will negatively impact housing production since the need to provide public access is not changing, only the form of that access.

Therefore, the Department believes there is an extreme unlikelihood that the proposed rule amendments would evoke a negative change in housing production within planning areas 1 or 2 or within Designated Centers. Further, the Department does not believe the rules will decrease or result in any significant change in the availability of affordable housing in the coastal area.

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

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

7:7-1.3 Definitions

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

"Amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. **"Amusements" also means bar and restaurant establishments and entertainment venues such as stage and band shells and associated seating areas.** "Amusements" do not include games for cash payoffs [, bars or restaurants].

...

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

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

1.-9. (No change.)

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

(b) (No change.)

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

(a) This coastal general permit authorizes beach and dune maintenance activities **by municipal applicants with Department-approved municipal public access plans, in accordance with N.J.A.C. 7:7E-8.11(c) through (m), or by non-municipal applicants** provided:

1.- 2. (No change.)

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

(b) (No change.)

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

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

1.-7. (No change.)

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

(b) (No change.)

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

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

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

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

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This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

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

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

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

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

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

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

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

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

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1.-6. (No change.)

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

(b) (No change.)

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

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

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

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

(d) (No change.)

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

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

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

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

(d) (No change.)

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

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

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

1. (No change.)

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

3.-5. (No change.)

(d) (No change.)

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

(a) (No change.)

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

1. (No change.)

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

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

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3.-7. (No change.)

(c) (No change.)

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

(a) (No change.)

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

(c) (No change.)

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

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

1.-10. (No change.)

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

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

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

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

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

1.-2. (No change.)

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

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

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

(a) This coastal general permit authorizes the construction of structures such as equipment storage containers and sheds, stage platforms, bleachers, portable restrooms,

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food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments and multi-family residential developments over 75 units provided **that**:

1. **Except as provided in i. below**, [The] **the** structure remains in place only from May 1 through October 31;

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

2. **All structures authorized by this general permit that are located on a beach, except underground utilities, shall be immediately removed from the beach and relocated to a secure place at any time that the National Weather Service issues a Severe Weather Alert for the municipality in which the development is located, for significant weather events, such as Coastal Flood Warning, Extreme Wind Warning, Hurricane Warning, Tornado Warning or Tropical Storm Warning, that would directly affect structures left on the beach, until the Severe Weather Alert is lifted.**

[2.–8.] **3.-9.** (No change in text.)

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

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

i.– ii. (No change.)

(b)–(c) (No change.)

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

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

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

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

7:7E Coastal Zone Management Rules

7:7E-1.8 Definitions

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

...

"Amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" also means bar and restaurant establishments and entertainment venues such as stage and band shells and associated seating areas. "Amusements" do not include games for cash payoffs."

...

"Critical infrastructure" means the same as "Homeland security facility."

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

...

"Homeland security facility" means any facility deemed by the New Jersey Office of Homeland Security and Preparedness or the Federal Department of Homeland Security to be either critical in nature or a key resource. These facilities may include, but are not limited to, airports and military facilities, transportation infrastructure, and certain chemical or energy facilities and utilities, marine terminal or transfer facilities, and freight or passenger rail lines.

...

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

...

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

...

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“Parcel” means the totality of all lots under common ownership upon which an existing development is located on (the date of proposal).

...

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

...

“Redevelopment” means the development of a previously developed site that has been inactive, underutilized, or abandoned for 5 years or less.

...

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

7:7E-3.22 Beaches

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

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

(d) (No change.)

7:7E-3.23 Filled water's edge

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

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

(j) (No change.)

7:7E-3.43 Special urban areas

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

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

1.-3. (No change.)

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

(e) (No change.)

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7:7E-3.48 Hudson River Waterfront Area

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

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Zone Management rules with particular attention given to N.J.A.C. 7:7E- 3.40, Public open space, N.J.A.C. 7:7E-3.41 Special hazards areas, N.J.A.C. 7:7E-3.43 Special urban areas, N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public [trust rights] **access, specifically N.J.A.C. 7:7E-8.11(a), (n)3i, 4i and 5**, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d) (No change.)

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation restriction in favor of the Department. The conservation restriction shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. Public access to and along the main route of the Hudson Waterfront Walkway and on the adjacent piers shall be on a 24-hour basis [, except as provided by N.J.A.C. 7:7E-8.11(f)] **unless it can be demonstrated to the Department that strict compliance with this provision is not practicable based on the risk of injury from substantial**

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permanent obstructions or proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property that would make 24-hour access not feasible.

2. (No change.)

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule, and the development, as proposed, would remain in compliance with the [public trust rights rule, N.J.A.C. 7:7E-8.11] **N.J.A.C. 7:7E-3.50**. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

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

(a) Lands and waters subject to public trust rights are tidal waterways and their shores, including both lands now or formerly below the mean high water line, and shores above the mean high water line. Tidal waterways and their shores are subject to the Public Trust Doctrine and are held in trust by the State for the benefit of all the people, allowing the public to fully enjoy these lands and waters for a variety of public uses. **Public trust rights include public access which is the ability of the public to pass physically and visually to, from and along the ocean shore and other waterfronts subject to public trust rights and to use these lands and waters for activities such as navigation, fishing and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public trust rights also include the right to perpendicular and linear access.**

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

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

(d) **Except for the Hudson River waterfront area, [P]public access to lands and waters subject to public trust rights shall be provided in accordance with the public [trust rights] access rule, N.J.A.C. 7:7E-8.11. Public access to lands and waters subject to public trust rights in the Hudson River waterfront area shall be provided in accordance with the Hudson River waterfront area rule, N.J.A.C. 7:7E-3.48. Development that does not comply with N.J.A.C. 7:7E-8.11, public access, or with N.J.A.C. 7:7E-3.48 in the Hudson River waterfront area, is discouraged in lands and waters subject to public trust rights.**

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

7:7E-7.2 Housing use rules

(a) (No change.)

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

1. (No change.)
2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

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i.-ii. (No change.)

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

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

4.-7. (No change.)

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

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

1.-4. (No change.)

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

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

6.- 13. (No change.)

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

1.- 4. (No change.)

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

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

6.-13. (No change.)

(g) (No change.)

7:7E-7.3 Resort/Recreational Use

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

(d) Standards relevant to marinas are as follows:

1. (No change.)

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

i.-iii. (No change.)

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

3.-11. (No change.)

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

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

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

i.– v. (No change.)

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

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

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

7:7E-7.4 Energy facility use rule

(a) (No change.)

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

1.-2. (No change.)

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

4. (No change.)

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

7:7E-7.7 Industry Use rule

(a) (No change.)

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

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

7:7E-7.11 Coastal engineering

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

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

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

i.-iii. (No change.)

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

2. (No change.)

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

1.-3. (No change.)

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

5.-6. (No change.)

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

(a) [Public trust rights to tidal waterways and their shores (public trust rights) established by the Public Trust Doctrine include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights as defined at N.J.A.C. 7:7E-3.50, and to use these lands and waters for activities such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. Public trust rights also include the right to perpendicular and linear access.

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Public accessways and public access areas provide a means for the public to pass along and use lands and waters subject to public trust rights.]

Public access to the waterfront is the ability of the public to pass physically and visually to, from, and along tidal waterways and their shores and to use such shores, waterfronts and waters for activities such as navigation, fishing, and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public accessways and public access areas include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way. Public access for the “Hudson River Waterfront Area” shall be provided in accordance with N.J.A.C. 7:7E-3.48 except for ports and certain existing industrial, public, and homeland security facilities for which access is not required in accordance with N.J.A.C. 7:7E-8.11(n)3i, 4i and 5. No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. 7:7E-3.50. Further, no authorization or approval under this chapter shall be considered a Tidelands approval or shall exempt an applicant from the obligation to obtain a Tidelands approval, if needed.

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

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

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

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

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

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

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

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

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

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

1. Include perpendicular access and a linear area along the tidal waterway and its entire shore; and
2. If located in a natural area of a tidal waterway, be designed to minimize the impacts to the natural area and tidal waterway including impacts to habitat value, vegetation and water quality.

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

1. The linear area shall consist of a walkway that meets the following:
 - i. The minimum width of walkway free of obstruction shall be 16 feet; and
 - ii. An area a minimum of 30 feet wide, including the walkway area, shall be permanently protected by a conservation restriction; and
2. The perpendicular access shall consist of a walkway that meets the following:
 - i. The minimum width of the walkway free of obstruction shall be 10 feet;

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

iii. The linear distance between perpendicular accessways shall not exceed one-half mile as measured generally parallel to the waterway; and

3. The Department may reduce the walkway width requirements at (e)1i and 2i above, as necessary to protect endangered and threatened wildlife or vegetation species habitat, critical wildlife habitat as defined at N.J.A.C. 7:7-3.39 , natural areas or existing infrastructure.

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

1. Public access to tidal waterways and their shores shall be available at all times. However, the Department may allow closure of an area otherwise available for public access during specified late night hours upon documentation of unique circumstances, other than the risk associated with tidal waterways, that threaten public safety and warrant such closure. In no case shall physical barriers be used to close public access. This exception does not apply to the Hudson River Waterfront Area or to the waterways listed in (e) above;

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

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

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

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

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

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

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

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

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may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below.

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

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

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

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

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

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

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

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

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

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

6. Except as provided in (f)7 below, the Department shall not require public access where development of a new or at an existing single family home, duplex, or associated

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

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

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

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

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

8. Where development impacting a facility subject to a Federal or State homeland security statutory scheme is proposed and the Department determines, upon consultation with the Office of Homeland Security and Preparedness, that perpendicular public access and/or a linear public access area along the entire shore of the tidal waterway is not practicable because it poses an unacceptable homeland security risk:

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

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

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(b) In addition to the broad coastal goals outlined at N.J.A.C. 7:7E-1.1(c), public access shall be provided in a manner designed to achieve the following:

1. All levels of government in New Jersey shall seek to create and enhance opportunities for public access to tidal waterways and their shores, on a non-discriminatory basis;

2. All existing public access to, and along tidal waterways and their shores shall be maintained to the maximum extent practicable;

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

4. Public access to tidal waterways and their shores shall be provided in such a way that it shall not create conditions that may be reasonably expected to endanger public health or safety, or damage the environment. To that end, public access may be restricted seasonally, hourly, or in scope (for example, access restricted to a portion of the property, or access allowed for fishing, but not swimming due to consistent strong currents); and

5. Public access to tidal waterways and their shores shall be provided in such a way that it shall not create a significant homeland security vulnerability. Therefore, public access may be prohibited in locations where homeland security concerns are present 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.

(c) Development proposed on sites which are located on or adjacent to tidal waterways and their shores shall provide public access. Public access in the Hudson River Waterfront Area, as described at N.J.A.C. 7:7E-3.48(a), shall be provided in

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accordance with N.J.A.C. 7:7E-3.48. Public access for development in other areas shall be provided as follows:

1. In municipalities which have received Department approval of a Municipal Public Access Plan in accordance with (d) – (m) below on or before the date of receipt of a permit application by the Department, public access requirements shall be satisfied in accordance with the Municipal Public Access Plan;

2. In municipalities that do not have an approved Municipal Public Access Plan on or before the date of receipt of a permit application by the Department, access shall be provided in accordance with N.J.A.C. 7:7E-8.11(n), for commercial, residential, industrial and public development, and for homeland security facilities. Coastal permit applications shall include a project specific access plan that provides for public access in accordance with all applicable requirements; and

3. In all municipalities, regardless of whether there is a Department approved Municipal Public Access Plan, access shall be provided in accordance with N.J.A.C. 7:7E-8.11(o) for marinas, N.J.A.C. 7:7E-8.11(p) for piers, N.J.A.C. 7:7E-8.11(q) for beach and dune maintenance activities, and with N.J.A.C. 7:7E-8.11(r) for shore protection projects. Coastal permit applications shall include a project specific access plan that provides for public access in accordance with all applicable requirements.

(d) Municipalities are encouraged to develop and submit to the Department an application for approval of a Municipal Public Access Plan complying with the requirements of (e) through (m) below. Municipal Public Access Plans shall satisfy the goals specified at N.J.A.C. 7:7E-1.1(c) and (b) above, as well as all other requirements of this section. Municipal Public Access Plans shall not provide for access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules).

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(e) A municipality seeking approval of a Municipal Public Access Plan shall file an application for approval with the Department. The application shall include a proposed Municipal Public Access Plan consisting of the following elements:

1. A statement describing the overall goal of the Municipal Public Access Plan and the administrative mechanisms (for example, conservation restrictions, easements, ordinances) that either are already in place, or that shall be put in place to ensure that the municipality will provide permanently protected access to the water and, water dependent and water oriented activities along all tidal waterways and their shores within the municipal boundaries. If the Municipal Public Access Plan proposes to provide access to the same waterway outside of municipal boundaries through a joint effort with a county or adjacent municipality governmental body, the statement shall include a description of the administrative mechanisms that will ensure access through that effort will be permanently protected;

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

3. A public access needs assessment that evaluates:

i. Existing access points or locations providing perpendicular access to tidal waterways and their shores within the municipality;

ii. Existing water dependent and water oriented activities that provide public access to tidal waterways and their shores within the municipality;

iii. Existing practical limitations to public access. Alternatives to address any limitations determined to exist shall be provided, where feasible. Examples of practical limitations include, but are not limited to, a lack of restrooms or parking which could effectively limit the public's access to tidal waterways and their shores; and

iv. The need for additional locations to provide perpendicular access to tidal waterways and their shores within the municipality;

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4. A digital map and inventory identifying:

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

ii. All existing and proposed public accessways to tidal waterways and their shores including, but not limited to, streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, and public dedicated rights-of-way held by the municipality;

iii. All proposed public access facilities, including, but not limited to public accessways located parallel to the shoreline with perpendicular access; boat ramps, piers, or other direct access to the waterway; sitting/observation areas; public restrooms; off and on-street parking; and

iv. Those facilities identified in ii. and iii. above that are compliant with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

5. An implementation strategy that:

i. Describes the forms of public access proposed in order to satisfy the need for public access as determined by the public access needs assessment, while taking into account the population, anticipated demand and local availability of alternatives;

ii. Provides a comprehensive list of public access projects and initiatives to be undertaken along with an implementation schedule;

iii. Identifies proposed tools to implement the municipal public access plan measures, including, but not limited to, the adoption or amendment of municipal ordinances, the creation of a Public Access Fund, established in accordance with (f) below, to be used solely for the development and maintenance of public access, and the development of other municipal programs that ensure reasonable access to the water, and water dependent and water oriented activities along all tidal waterways and their shores;

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(1) If the Municipal Public Access Plan includes provision for monetary compensation in lieu of onsite public access in accordance with (f) below, this portion of the plan shall specify the type of uses for which a monetary contribution shall be required, for example residential, commercial, industrial, and/or homeland security;

iv. Identifies and, as necessary, proposes modifications to existing plans, ordinances and programs necessary to implement the Municipal Public Access Plan;

v. For municipalities subject to (r) below, identifies how the municipality proposes to provide access points to achieve compliance with that subsection;

vi. Provides an estimate of the cost of implementing, constructing and maintaining the access facilities proposed in the plan and specifies how this cost will be funded;

vii. Provides a schedule for implementation of the municipal public access plan;

viii. Identifies ordinances already in place or to be adopted requiring appropriate signage and placement of signage for public access areas;

ix. Identifies measures to be implemented to permanently protect the public access identified in the plan through the required recording of conservation easements/restrictions, or, for municipally owned properties providing public access, through placement of the property providing access on the municipal Recreation and Open Space Inventory (ROSI) (see Green Acres Program rules at N.J.A.C. 7:36-6.5, Recreation and Open Space Inventory Submissions);

x. Provides examples and/or model(s) of existing and proposed conservation easements/restrictions that preserve all public access identified in the municipal public access plan, to protect the access in perpetuity; and

xi. Includes a draft resolution for incorporating the Department-approved, Municipal Public Access Plan into a Master Plan element (for example, the land use, recreation, and/or conservation plan element).

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(f) A Municipal Public Access Plan may require a monetary contribution to be used to provide public access elsewhere in the municipality or outside the municipal boundaries along the same waterway as part of a joint project with a county or adjacent municipal governmental body in lieu of onsite public access. Municipalities that require a monetary contribution shall establish a dedicated Public Access Fund into which all funds collected shall be deposited. A Municipal Public Access Plan containing a monetary contribution requirement shall specify the circumstances in which such contribution will be required in accordance with (e)5iii(1) above. If a monetary contribution in lieu of onsite public access is included in a Municipal Public Access Plan, the amount of the contribution shall be based upon a determination of the costs that would be incurred if land was purchased for creating access and the access was provided in the form of a walkway, using the following formula:

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

where:

TWC = total walkway cost

LAC = land acquisition cost

1. The TWC is calculated by first adding the length of the perpendicular access, as measured in feet along the shorter property line, running from the non-waterward property boundary to waterward property boundary, to the length of the waterfront portion of the property as measured in feet. This total accessway length is multiplied by 10 feet, the minimum walkway width (N.J.A.C. 7:7E-8.11(w)), to give the total square feet of walkway. The TWC is determined by multiplying the total square feet of walkway by \$7.00 (approximate average cost per square foot for walkway construction).

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2. The LAC is calculated by dividing the equalized assessed value of the property by the total square footage of the property and multiplying the resulting value per square foot by the total square footage of the walkway utilized in calculating TWC. “Equalized assessed value” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance N.J.S.A. 54:1-35 et seq.

3. For example, the total contribution for a 10,000 square foot property with a perpendicular access length of 50 feet, a total water frontage of 100 feet and an equalized assessed value of \$300,000 would be calculated as follows:

Total Walkway Cost:

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

Land Acquisition Cost

Equalized assessed land value of property		\$300,000
Lot size	÷	10,000 sq. ft.
<hr/>		
Cost per sq. ft.		\$30.00/sq. ft.
Land acquisition (\$30/sq. ft. x 1500 sq. ft. total walkway)		\$45,000

Total Contribution = \$10,500 + \$45,000 = \$55,500

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(g) A Municipal Public Access Plan shall not include:

1. On-site public access requirements in excess of those that would be required under this chapter in the absence of an approved municipal public access plan;

2. Public access requirements in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2. Public access requirements in the Hudson River Waterfront Area shall be governed by N.J.A.C. 7:7E-3.48;

3. Public access requirements at marinas, as defined at N.J.A.C. 7:7E-7.3(d)1. Public access requirements at marinas shall be governed by (o) below; or

4. Public access requirements at piers. Public access requirements at piers shall be governed by (p) below.

(h) A municipality filing an application for approval of a Municipal Public Access Plan pursuant to (e) above shall provide a full copy of the submittal to the county planning board for the county within which the municipality is located as well as to any regional planning entities with jurisdiction over any portion of the municipality affected by the Municipal Public Access Plan. If the municipality filing an application for approval of a Municipal Public Access Plan has proposed, as a component of the plan, any joint projects with neighboring municipality, a full copy of the submittal shall also be provided to that neighboring municipality and the county planning board for the county within which the neighboring municipality is located should that municipality be located in a different county.

(i) The Department shall review the draft Municipal Public Access Plan and supporting documents to determine whether the plan is consistent with N.J.A.C. 7:7E-1.1(c), the standards and goals for public access at (b) above and all other requirements of this section. The Department shall notify the applicant in writing of

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its determination and shall publish notice in the New Jersey Register and the DEP Bulletin.

(j) A municipality which has received approval of a Municipal Public Access Plan shall as a condition of the approval:

i. Initiate action necessary to incorporate the approved Municipal Public Access Plan into the municipality's Master Plan; and

ii. Upon adoption of the Municipal Public Access Plan into the municipal Master Plan, provide the Department with a copy of an approved resolution incorporating the DEP-approved Municipal Public Access Plan into the Master Plan.

(k) Upon receipt by the Department of the resolution incorporating the approved Municipal Public Access Plan into the municipality's Master Plan, public access required to satisfy the conditions of a Department permit for development in the municipality for permit applications filed with the Department subsequent to the Department's receipt of the resolution shall be provided in accordance with the Municipal Public Access Plan.

(l) Department review and approval is required before a municipality may make changes to an approved Municipal Public Access Plan that impact the location or type of access to be provided, or that institute or amend the terms of a contribution in lieu of an onsite public access requirement pursuant to (f) above. In support of a request to amend the approved plan under this subsection, the municipality shall submit to the Department the approved plan with the information specified in (e) above updated to reflect the proposed change. This submission shall provide information with reference to the requested change to the plan and shall detail how the proposed change affects the approved plan.

(m) An approved Municipal Public Access Plan shall be valid for a period of six years. However, the plan may be renewed. To obtain plan renewal, at least six months before the plan expires the municipality shall provide a copy of the expiring Municipal Public Access Plan, together with a progress report identifying:

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1. The status of all projects that have been undertaken in accordance with the existing, approved, plan since the approval or last renewal;

2. Projects not yet initiated in accordance with the plan with an explanation of why the project has not been initiated and a new proposed schedule for initiation and completion of the project;

3. Proposed amendments to the approved plan;

4. All funds received as contribution in lieu of onsite access and a detailed accounting of all expenditures of those funds; and

5. Any problems encountered in pursuit of the plan's objectives and goals and proposed remedies to assure the objectives and goals in the proposed new plan are met.

(n) In municipalities that do not have an approved Municipal Public Access Plan, for sites which are located on or adjacent to tidal waterway and their shores, public access along and use of the beach and the shores shall be provided as follows. The Department shall consider factors such as type of public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, square footage of access area, and environmental impact or benefit when determining whether proposed public access is appropriate. The Department shall not approve public access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules):

1. Commercial development shall provide both visual and physical access as follows:

i. For existing commercial development, except for existing commercial development classified as "new commercial development" pursuant to ii. below, where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the

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existing development, existing public access shall be maintained or equivalent public access shall be provided onsite. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming and passive recreation, in the same manner and by the same number of people as in the existing public access area. If there is no existing public access onsite, no public access is required;

ii. For new commercial development, access shall be provided onsite, at a minimum during normal operating hours. For the purposes of this subparagraph, “new commercial development” also includes the conversion of any existing non-commercial use to a commercial use and any change in an existing development that would result in either:

(1) greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving; or

(2) development on a parcel which was not included in the existing development;

iii. Public access proposed by the applicant to satisfy the requirements of this paragraph may include any one or combination of the following:

(1) A public accessway designed in accordance with (w) below, located parallel to the shoreline with perpendicular access;

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

(3) A waterfront pocket park;

(4) Public restrooms to accommodate those utilizing public access; and/or

(5) Additional public parking to accommodate those utilizing public access;

2. Residential development shall provide both visual and physical access as follows:

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i. At an existing residential development, where the proposed activities consist solely of accessory development or structural shore protection, existing public access shall be maintained. If it is necessary to permanently impact the existing public access in order to perform the activities, equivalent access shall be provided onsite. If currently there is no public access onsite, no public access is required;

ii. For new residential development, where the development consists solely of the construction of one single family home or duplex not in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, no public access is required;

iii. For new residential development consisting of more than one single family home or duplex, or the conversion of any existing non-residential use to a residential use, that has a total combined water frontage of 500 linear feet or less, public access shall be provided as follows:

(1) Unless the applicant demonstrates that onsite public access is not feasible, in accordance with (n)2iii(2) below, public access proposed to satisfy the requirements of this paragraph shall be provided onsite in accordance with (n)1iii above;

(2) If the applicant demonstrates that onsite public access is not feasible, based on the size of the site, the character of the waterway, and environmental impact or benefits, equivalent offsite public access shall be provided on the same waterway within the same municipality as the residential development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), cost, square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

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(3) If the applicant demonstrates that offsite public access within the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (n)2iii(2) above, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality where the access is consistent with the neighboring municipality's MPAP or, if there is no MPAP, the access is located and designed to be consistent with local requirements such as local zoning and ordinances. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), cost, square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

iv. For new residential development consisting of more than one single family home or duplex or the conversion of any existing non-residential use to a residential use, where the development has a total combined water frontage of more than 500 linear feet, access shall be provided onsite in accordance with (n)1iii above;

3. Except as provided at (n)4 and 5 below, industrial development and public development shall provide both visual and physical access as follows:

i. For existing industrial or public development, except as provided at ii. below, where the proposed activity consists of the maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, existing public access shall be maintained or equivalent onsite public access shall be provided. Equivalent public access shall include access that provides for opportunities to participate in the same activities (such as fishing, swimming, or passive recreation), in the same manner and by the same number of people as in the existing public access area. If there is no existing public access onsite, no public access is required;

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ii. For new industrial or public development, including the conversion of any existing use to an industrial or public use, public access shall be provided onsite during normal operating hours, unless it can be demonstrated that continued public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, and no measures can be taken to avert these risks. In cases where the Department concurs that the risk is too great for onsite public access, access shall be provided in accordance with (n)3iii below. For the purposes of this paragraph, “new industrial or public development” includes development of areas not within the parcel containing the existing development. Where onsite public access is required, public access shall be provided in accordance with (n)1iii above;

iii. Where it has been demonstrated that onsite access is not practicable based on the presence of substantial permanent obstructions or the risk of injury from proposed hazardous operations, and no reasonable measures can be taken to avert these risks, equivalent offsite public access shall be provided on the same waterway and within the same municipality as the development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), cost, square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

iv. If the applicant demonstrates that offsite public access within the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (n)3ii above, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality where the access is consistent with the neighboring municipality’s MPAP or, if there is no MPAP, the access is located and designed to be consistent with local requirements such as local zoning and ordinances.

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4. Homeland security facilities shall provide both visual and physical access as follows:

i. For existing homeland security facilities, except as provided at ii. below, where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, existing public access shall be maintained onsite or equivalent public access shall be provided either onsite or offsite on the same waterway and within the same municipality as the development. Equivalent public access shall include access that provides for opportunities to participate in the same activities such as fishing, swimming, or passive recreation, in the same manner and by the same number of people as in the existing public access area. If there is no existing public access onsite, no public access is required;

ii. For new homeland security facilities, including the conversion of a non-homeland security facility to a homeland security facility, or the expansion of an existing homeland security facility onto areas not within the parcel containing the existing development, the applicant may provide either onsite public access or equivalent offsite public access on the same waterway and within the same municipality as the development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), cost, square footage of access area, and environmental impact/benefit when determining whether proposed offsite public access is equivalent to that which would have been required onsite;

5. Ports, as defined at N.J.A.C. 7:7E-3.11, shall provide both visual and physical access as follows:

i. For all port facilities, existing public access shall be maintained or equivalent onsite public access shall be provided. If it can be demonstrated that continued onsite public access is not practicable based on the risk of injury from

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proposed hazardous operations, or substantial permanent obstructions, and no measures can be taken to avert these risks, equivalent public access shall be provided offsite. The Department shall consider factors such as the type of public access available (for example, if swimming access is available onsite then swimming access should be available at the offsite location), cost, square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite. If there is no existing public access onsite, no public access is required.

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

i. For existing marina development where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel which included the existing development, existing public access shall be maintained. If it is necessary to impact the existing public access in order to perform the proposed activities, equivalent public access shall be provided onsite. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming, and passive recreation, in the same manner and by the same number of people as in the existing public access area. If there is no existing public access onsite, no public access is required except as provided at iii. below;

ii. For new marina development, public access shall be provided onsite during normal operating hours. For the purposes of this subsection, “new marina development” includes any change in the existing development that would result in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving, or proposed development of areas not within the parcel containing the existing development for which a coastal permit was obtained, or if the marina was not previously permitted because a coastal permit was not required,

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includes development on a lot or lots which are purchased after (the date of proposal);

iii. If the marina development includes a beach area, public access along and use of the beach shall be provided and activities that have the effect of discouraging or preventing the exercise of public trust rights, as described at N.J.A.C. 7:7E-3.50, are prohibited in accordance with (u) below.

iv. Applicants for new marinas, as described at (o)ii above, shall provide to the Department at the time of application, for its review and approval, a public access plan for the marina development which shall include the following:

(1) A site plan identifying the location and type of access provided, including both existing and proposed, as well as any areas closed to public access based on the presence of substantial permanent obstructions or the risk of injury from proposed hazardous operations, and where no reasonable measures can be taken to avert these risks. The plan shall include an explanation of what the specific risks and hazards are and shall indicate where access has been enhanced to compensate for the area closed due to the dangerous or hazardous conditions. Public access shall be provided in accordance with (n)1iii; and

(2) A listing of the normal operating hours for the marina;

v. Once a marina access plan has been approved by the Department, any proposed changes to that plan shall require additional Department review and approval, regardless of whether or not a permit modification is also required. For example, a change in the marina's operating hours that would not require a permit or permit modification, would result in a change in the public's ability to use the public access and therefore requires review by the Department. In support of a request to amend the approved plan under this paragraph, the applicant shall submit to the Department the approved plan updated to reflect the proposed change(s). This submission shall provide information with reference to the requested change(s) to the plan and shall detail how the proposed change(s) affects

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the approved plan. If the proposed change(s) result in curtailment of public access hours or reduction in any way of public access, the submission shall additionally specify proposed changes to offset proposed reductions in public access.

(p) Except in accordance with the Hudson Waterfront area at N.J.A.C. 7:7E-3.48, and Atlantic City at N.J.A.C. 7:7E-3.49, development which is proposed to be located on an existing pier shall provide public access in accordance with the type of development being proposed, that is, commercial, residential, industrial or public, homeland security or ports (see (n)1, 2, 3, 4 or 5, respectively, above).

(q) For coastal permit applications that include beach and dune maintenance activities, existing public access shall be maintained or equivalent onsite public access shall be provided regardless of whether the loss of access is temporary or permanent. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming, or passive recreation, in the same manner and by the same number of people as in the existing public access area.

(r) For applicants obtaining permits to conduct shore protection projects along the shores of the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay, and/or estuaries directly connected therewith, under the guidance of, and with participation by, the Army Corps of Engineers (ACOE), access shall be provided in accordance with the ACOE Planning Guidance Notebook Section IV– Hurricane and Storm Damage Prevention (CECW-P Engineer Regulation 1105-2-100, April 22, 2000) as amended and supplemented. The ACOE guidance states, “Reasonable access is access approximately every one-half mile or less,” and further states, “lack of sufficient parking facilities for the general public (including nonresident users) located reasonably near and accessible to the project beaches may constitute a

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restriction on public access and use, thereby precluding eligibility for Corps participation.” (See section E-24d., Public Use and its Relation to Federal Participation, provisions (2) and (3).)

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

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

[(i)] (u) Activities that have the effect of discouraging or preventing the exercise of public trust rights, **as described at N.J.A.C. 7:7E-3.50**, are prohibited. These activities include, but are not limited to, requiring photographic identification, requiring a liability waiver, requiring the purchase of drinks or food from a specific vendor, or prohibiting bringing beach equipment such as blankets or beach chairs.

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

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

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

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

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

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

(w) If a public accessway is chosen to satisfy the public access requirement in (n) and (o) above, the accessway shall provide a minimum width of 10 feet free of obstructions to public access. Amenities such as public benches, litter or recycling receptacles, and lighting fixtures are provided to enhance public access and shall not be considered obstructions.

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

[(m)] (x) A fee for use of bathing and recreational facilities and safeguards, such as lifeguards, toilets, showers, and parking, at publicly or privately owned beach or

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waterfront areas, may be charged in accordance with [(m)] (x)1 through 6 below.

However, no fees shall be charged solely for access to or use of tidal waterways and their shores. The fee schedule and documentation of compliance with this paragraph shall be submitted to the Department by the permittee [, Shore Protection Program participant or recipient of Green Acres funding for a Green Acres project site,] and its successors in title and interest upon request.

1.-6. (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. Immediately upon completion of construction, including beach nourishment, provide public accessways to the shore protection project, and where the shore protection project is a structure, the entire beach or shore outshore of the project. The linear distance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Withhold Shore Protection Program funding;

ii. Terminate the State Aid Agreement;

iii. Demand immediate repayment to the Shore Protection Fund of all Shore Protection Program funding for the project(s) in which the municipality participated; and/or

iv. Pursue any other specific remedies in the State Aid Agreement.

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

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

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

(1) Submit such public access plan;

(2) Comply with (q)2 through 5 below; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. The project site;

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

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

12. Within 10 days of completion of a Green Acres funded development for a Green Acres project site or within 180 days of disbursement of Green Acres funding for acquisition for a Green Acres project site, provide public restrooms and parking for the project site as directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and

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

i. Withhold Green Acres funding;

ii. Terminate the Green Acres Project Agreement executed pursuant to N.J.A.C. 7:36; and/or

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iii. Demand immediate repayment of all Green Acres funding that has been disbursed to funding recipient.

(r)] (z) (No change.)

7:7E-8.12 Scenic Resources and Design

(a) – (c) (No change.)

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall comply with the following, unless it meets the requirements at (e) **or** (f) below:

1.-2. (No change.)

(e) (No change.)

(f) Federal, State, county, or municipal development projects which are located adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk, and are greater than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with the setback requirements in (d)2 above provided that the development contains design elements that enhance physical or visual public access to the waterfront beyond that which would be afforded by strict compliance with (d)2 above and the development, as proposed, would remain in compliance with N.J.A.C. 7:7E-3.50.

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

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

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(a) This subchapter sets forth information that shall be included in the public access plan developed in accordance with subsections (p) and (q) of the public trust rights rule, N.J.A.C. 7:7E-8.11. N.J.A.C. 7:7E-8A.2 sets forth the information requirements for the public access plan that is required for municipalities to participate in Shore Protection Program funding or to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.3 sets forth the information requirements for the public access plan that is required for counties and nonprofit organizations to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.4 sets forth the requirements for the form and recording of conservation restrictions required pursuant to the N.J.A.C. 7:7E-8.11(n), (p) and (q). N.J.A.C. 7:7E-8A.5 sets forth the requirements for Public Access Instruments required pursuant to the N.J.A.C. 7:7E-8.11(p) and (q).

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

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

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

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

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

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

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

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1. A current tax map identifying:

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

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

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

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

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

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

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

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

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

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

1. Copies of prior State Aid Agreements;

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

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

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

(2) A restroom facility shall be located within one-quarter mile of each municipal boundary. The one-quarter mile from the municipal boundary can be increased provided the one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the one-quarter mile is increased and the distance from the municipal boundary is no greater than three-eighths mile;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- i. All tidal waterways and their shores located on or adjacent to the Green Acres project site;
 - ii. All existing and proposed public accessways to tidal waterways and their shores including streets, paths, trails, easements, paper streets, dune walkovers/walkways, piers and other dedicated public rights-of-way located on the Green Acres project site;
 - iii. All existing and proposed restrooms and parking for the public to access tidal waterways and their shores on the Green Acres project site;
2. Copies of all existing and proposed conservation restrictions required pursuant to N.J.A.C. 7:7E-8.11(q)10;
 3. For an applicant that is a county, a draft ordinance required pursuant to N.J.A.C. 7:7E-8.11(q)1; and
 4. A compliance statement demonstrating how the county or nonprofit organization and the proposed project comply with N.J.A.C. 7:7E-8.11(q).]

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

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

(b) A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department and in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.;
2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.; and
3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof.

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

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

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

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

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

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

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

(b) The Public Access Instrument shall list and identify by name all streets, roads, paper streets, easements, or other dedicated public rights-of-way held by the municipality that lead to tidal waterways and their shores. These shall be listed by block, lot and

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property owner on which the street, road, paper street, easement, or other dedicated public right-of-way is located and the lot, block and property owner of the lots that abut the street, road, paper street, easement, or other dedicated public right-of-way.

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

i. Where a beach or dune is present:

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

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

ii. Where no beach or dune is present:

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

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

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

[APPENDIX 6

PUBLIC ACCESS REQUIREMENTS FOR MARINAS THROUGH DECEMBER 31,
2010

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(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

6. Public access, including parking where appropriate, shall be provided to publicly

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funded shore protection structures, beaches nourished with public funds and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure or beach are prohibited.

7. Development located within the Hudson River Waterfront Special Area shall comply with the additional requirements of the Hudson River Waterfront rule, N.J.A.C. 7:7E-3.48.

8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).

9. Development within the Atlantic City Special Area shall comply with the additional requirements of the Atlantic City rule at N.J.A.C. 7:7E-3.49.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Coastal Zone Management rules.

11. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as a conservation restriction.

12. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

13. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

14. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

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(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

(d) Rationale: New Jersey's coastal waters and adjacent shorelands are a valuable limited public resource. they are protected by New Jersey's Shore Protection Program and patrolled by the New Jersey Marine Police which are both financed by all State residents.

Existing development often blocks the waters from public view and/or makes physical access to the waterfront difficult or impossible. In addition, private ownership of land immediately inland from publicly owned tidelands often limits public access to those lands and the waters which flow over them. This has limited access to and enjoyment of public resources by citizens who, through taxes, support their protection and maintenance.

The Public Trust Doctrine, which was enunciated by the New Jersey Supreme Court in *Neptune v. Avon-by-the-Sea* 61 NJ 296 (1972) and reaffirmed and expanded in *Van Ness v. Borough of Deal* 78 NJ 174 (1978) requires that tidal water bodies be accessible to the general public for navigation, fishing and recreation. The New Jersey Supreme Court, in *Matthews v. Bay Head Improvement Association* has extended the public right established by these cases to beaches which, though privately owned, are leased to an improvement association and are operated in a public manner. The most significant aspect of the decision is that is was not based entirely on the quasi-public nature of the Bay Head Improvement Association, but on the unique importance of the public's right of access to the shore, regardless of ownership. The Court said "recognizing the increasing demand for our State's beaches and the dynamic nature of the Public Trust Doctrine, we find that the public must be given both access to and use of privately-owned dry sand areas as reasonably necessary. While the public's rights in private beaches are not co-extensive with the rights enjoyed in municipal beaches, private landowners may not in all instances prevent the public from exercising its rights under the Public Trust Doctrine. The public must be afforded reasonable access to the foreshore as well as a

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suitable area for recreation on the dry sand." DEP, therefore, has an obligation to ensure that the common law right is not abridged. This obligation remains even after the State has conveyed tidelands to a private owner.

The Public Trust Doctrine requires that access be provided to publicly funded shore protection structures and that such structures not be used to impede access. The New Jersey Supreme Court in *Borough of Neptune v. Avon-by-the-Sea* 61 NJ 296 1972) held that:

“...at least where the upland sand area is owned by a municipality a political subdivision and creature of the state and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (61 N.J. at 308-309, emphasis added).”

Such structures, when located on wet sand beaches, tidally-flowed or formerly tidally-flowed lands are subject to the Public Trust Doctrine. Once built, most publicly funded shore protection structures become municipal property and are, therefore, subject to the Doctrine in the same manner as municipally owned beaches. The developed waterfront, due to its past industrial utilization, has been closed to the people that live adjacent to the waterfront. DEP intends to promote a horizontal network of open space at the water which could be visualized as a narrow strip used for walking, jogging, bicycling, sitting or viewing, which is contiguous, even if the path must detour around existing or proposed industry due to security needs or the lack of pre-existing access. These linear walkways will connect future and existing waterfront parks, open space areas, and commercial activities. The goal of the rule is the piecing together of a system that will provide continuous linkages and access along the entire waterfront.]