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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

DIVISION OF LAND USE REGULATION

Notice of Proposed Additional Substantial Changes upon Adoption to Proposed Amendments

Coastal Zone Management

Public Access

Proposed Changes: N.J.A.C. 7:7E-8.11

Proposed: April 4, 2011 at 43 N.J.R. 772(a).

Proposed Substantial Changes on Adoption: March 19, 2012 at 44 N.J.R. 614(a).

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 05-11-03.

A **public hearing** concerning the proposal is scheduled as follows:

Tuesday, July 31, 2012 at 9:30 A.M.

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street, 1st Floor

Trenton, NJ 08625

Submit comments by August 31, 2012:

Electronically at <http://www.nj.gov/dep/rules/comments>; or in hard copy to:

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Gary J. Brower, Esq.

ATTN: 05-11-03

NJ Department of Environmental Protection

Office of Legal Affairs

Mail Code 401-04L

401 East State Street, 4th Floor

PO Box 402

Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments electronically at the address noted above.

This notice of proposed additional substantial changes can be reviewed or downloaded from the Department's web page at www.nj.gov/dep/rules.

Take notice that the Department, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-4.10, is proposing substantial changes on adoption to the public access rules at N.J.A.C. 7:7E, published on April 4, 2011 (43 N.J.R. 772(a)). This proposal was previously the subject of a notice of substantial changes on adoption published on March 19, 2012 at 44 N.J.R. 614(a). The proposed substantial changes included in this notice address the public access requirements for public highways.

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As pointed out in amendments proposed on March 19, 2012, the Department recognizes that public highways are a unique type of development because they are linear projects that may extend for long distances. Public highways are also unique because the property used for public highway projects is a right-of-way and not a parcel as is typically the property used to develop commercial, residential, industrial and other types of public development. Therefore, in the March 19, 2012 notice of substantial changes, a new paragraph was proposed at N.J.A.C. 7:7E-8.11(n)6 to address public access requirements for public highways, including superhighways such as the New Jersey Turnpike and Garden State Parkway.

While the Department continues to believe that linear transportation projects should not be exempt from public access requirements, upon further consideration it has been determined that they should not be subject to stricter requirements than commercial, industrial, or other public development. Therefore, proposed changes include amendments to make public access requirements applicable to linear transportation projects similar to the requirements applicable to commercial, industrial, and other public development. With respect to the New Jersey Department of Transportation (NJDOT), the Department proposes changes to provide that when the issuance of any permit to the NJDOT under this chapter requires provision of new or enhanced public access and the Department and NJDOT determine that it is in the best interest of the public access project for it to be undertaken by the Department or the municipality, the NJDOT may provide funding for such access project to the Department or the municipality pursuant to an agreement between NJDOT and the Department. In addition, the Department proposes amendments to allow and encourage transportation agencies and counties to develop

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and seek Department approval of Transportation Public Access Plans, similar to Municipal Public Access Plans. Once approved, the agency will be required to provide public access for transportation projects which cross or result in placement of fill in tidal waterways in accordance with the process and criteria contained in the approved Transportation Public Access Plan. The proposed changes also include standards, application requirements, and the review process for Transportation Public Access Plans.

Summary

Proposed N.J.A.C. 7:7E-8.11(c) provides information regarding how the public access section 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. This proposed subsection also encourages municipalities to develop and submit to the Department applications for approval of a Municipal Public Access Plan for the reasons explained in the April 4, 2011 proposal. As discussed above, the Department has determined that it is appropriate to additionally encourage public transportation agencies and counties to submit to the Department an application for approval of a Transportation Public Access Plan and is proposing to amend proposed N.J.A.C. 7:7E-8.11(c) to reflect this. Public transportation agencies have established comprehensive policies, procedures, and standards by which transportation projects are developed. Those policies, procedures, and standards are intended to address many environmental, socioeconomic, and community issues, including public access, when transportation projects are advanced by these agencies. Through

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that process, public access can be considered within the context of the transportation project being proposed, potential project impacts, and overall community needs. In many cases, the Department has determined that these policies, procedures, and standards can adequately address public access requirements in accordance with this chapter. Accordingly, the Department believes it is appropriate to allow these public agencies to develop a proposed Transportation Public Access Plan and seek Department approval of the plan. If the proposed plan is approved by the Department, the agency's Department-approved Transportation Public Access Plan will serve as the document that the agency follows in determining the provision of public access for transportation projects which cross or place fill in tidal waterways. The process for submission and Department review of these plans is proposed at N.J.A.C. 7:7E-8.11(o)3, described below.

A new paragraph is proposed at N.J.A.C. 7:7E-8.11(c)4 to make clear that in all municipalities, regardless of whether the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with N.J.A.C. 7:7E-8.11(d), public access for public highways must be provided in accordance with N.J.A.C. 7:7E-8.11(o). As referenced above, requirements for public access on public highways were proposed to be recodified to N.J.A.C. 7:7E-8.11(n)6 in the March 19, 2012 notice of substantial changes on adoption. As part of this notice of additional substantial change on adoption, the Department is proposing to recodify these requirements to N.J.A.C. 7:7E-8.11(o) so that they can appear with provisions applicable to applications for and Department review of proposed Transportation Public Access Plans. As a result of that recodification and the proposed addition of N.J.A.C. 7:7E-8.11(c)4, the cross-reference to N.J.A.C. 7:7E-8.11(n)6ii(2) at

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N.J.A.C. 7:7E-8.11(c)1 is no longer accurate or necessary and is accordingly proposed for deletion. Similarly, N.J.A.C. 7:7E-8.11(c)2 is being modified to delete public highways from the list of types of development that must meet the requirements of N.J.A.C. 7:7E-8.11(n) as these requirements will no longer be contained in that subsection.

As referenced above, in order to reflect public access requirements applicable to public highways in the same subsection as proposed provisions applicable to Transportation Public Access Plans, the Department is proposing to recodify proposed N.J.A.C. 7:7E-8.11(n)6 to N.J.A.C. 7:7E-8.11(o). Consistent with the change proposed to N.J.A.C. 7:7E-8.11(c), the Department is proposing to amend the lead-in language of recodified N.J.A.C. 7:7E-8.11(o) to reiterate the Department's encouragement of applications for Transportation Public Access Plans. The sentence here includes a specific reference to N.J.A.C. 7:7E-8.11(o)3 which contains the requirements applicable to Transportation Public Access Plans.

New paragraphs N.J.A.C. 7:7E-8.11(o)3 through 7 include the standards, and application and review process for applications, for approval of Transportation Public Access Plans.

The Department, as discussed above, is proposing to modify the public access requirements for public highways, including superhighways, so that they are consistent with the requirements placed on commercial, industrial, and other public developments. For these other forms of development, existing developments (except for existing developments that are considered new developments because they result in a change of use, expansion outside the existing parcel, or in

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the case of commercial developments, where greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving is proposed), are not required to create new public access, where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development. In addition, the Department is proposing to clarify that public access is only required for public roadway projects when the new road or expansion crosses or proposes fill in a tidal waterway.

The Department is making this adjustment to provide consistency through several proposed amendments.

With respect to superhighways, at proposed N.J.A.C. 7:7E-8.11(o)1i (recodified from N.J.A.C. 7:7E-8.11(n)6i(1)), the Department is proposing to amend the current proposal that provides that additional public access is not required where the proposed activity consists of maintenance or rehabilitation that remains entirely within the paved constructed development, to instead provide that additional public access is not required where the proposed activity consists of maintenance, rehabilitation, reconstruction, or expansion that remains entirely within the right-of-way of the roadway existing as of the effective date of the amendments. This change is consistent with the standard applicable to commercial, industrial, and other public development. For those forms of development, additional public access is not required where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the development (see, for example, proposed N.J.A.C. 7:7E-

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8.11(n)1i applicable to existing commercial development). The Department is proposing to insert a date certain for when the land has to be held as right-of-way to assure that it is clear that classification of subsequently acquired new land for the purpose of road expansion as right-of-way will not result in an exception from public access requirements. This is similar to the other forms of development where the property has to be onto contiguous lots under common ownership on April 4, 2011 (see proposed definition of “parcel”). For public highways, the parcel is considered the right-of-way existing as of the effective date of the amendments.

The Department is also proposing to amend proposed N.J.A.C. 7:7E-8.11(o)1ii (recodified from N.J.A.C. 7:7E-8.11(n)6i(2)), which states that for superhighways where the proposed activity is an expansion outside the paved constructed development, public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located. The amendment proposed at this time would allow superhighways, where the proposed activity is an expansion outside the right-of-way existing as of (the effective date of the amendments) and the expansion crosses or proposes fill in a tidal waterway, to provide public access in accordance with one of the following: a Department-approved Transportation Public Access Plan; a Department-approved Municipal Public Access Plan; funding to the Department or municipality pursuant to an agreement between the New Jersey Department of Transportation and the Department to be used to provide new or enhanced public access; or offsite on the waterway(s) and within the municipality(s) where the development is located. These changes, except for the option for NJDOT to provide funding to the Department or municipality, are consistent with when public access is required for new commercial, industrial, and other public development

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when the development is outside the parcel containing the existing development. The Department is adding the provision in this paragraph as well as in N.J.A.C. 7:7E-8.11(o)2ii (recodified from N.J.A.C. 7:7E-8.11(n)6ii(2)) to allow public transportation agencies to choose to satisfy their public access requirements in accordance with a Transportation Public Access Plan since many of these agencies have established comprehensive policies, procedures, and standards by which transportation projects are developed. Those policies, procedures, and standards are intended to address many environmental, socioeconomic, and community issues, including public access, when transportation projects are advanced by these agencies. The Department is proposing to add the option for NJDOT to provide funding to the Department or municipality for their public highway projects because, as discussed in the Response to Comment 130 in the notice of substantial changes on adoption to proposed amendments published on March 19, 2012 (see 44 N.J.R. 614(a)), the Department agrees that new public access is not feasible onsite on superhighways, such as the Turnpike or the Parkway, and therefore public access requirements for projects on superhighways may be fulfilled by establishing offsite access and/or by making a monetary contribution if an approved Municipal Public Access Plan with a fund is available. The Department is proposing to add the ability for NJDOT to provide funding to the Department or municipality to be used to provide new or enhanced public access. For example, where legislative appropriations allow NJDOT trust dollars to be directed to the Department's Green Acres Program to provide new or enhanced public access in that municipality, the NJDOT would then have the statutory authority to provide funding. In order to allow NJDOT to provide funding to the Department, the Department is proposing to insert an exception for NJDOT at N.J.A.C. 7:7E-8.11(f)2 to provide for that option.

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This public access fund would be used by the Department or the municipality to provide additional or enhanced public access. The ability for NJDOT to provide funding when it is in the best interest of the public access project allows a common sense approach to satisfying public access requirements.

N.J.A.C. 7:7E-8.11(o)1iii (recodified from N.J.A.C. 7:7E-8.11(n)6i(3)) is proposed for amendment to correct cross-references changed by other proposed amendments.

For public highways, other than superhighways, at proposed N.J.A.C. 7:7E-8.11(o)2i (recodified from N.J.A.C. 7:7E-8.11(n)6ii(1)), the Department is proposing to amend the current proposal which states that no additional public access is required for existing public highways, except as provided at proposed N.J.A.C. 7:7E-8.11(o)2ii (as recodified), where the proposed activity consists of the maintenance or rehabilitation that remains entirely within the paved constructed development, no public access is required if there is no existing public access onsite. As amended, where the proposed activity consists of the maintenance, reconstruction, rehabilitation, or expansion that remains entirely within the right-of-way existing as of the effective date of the amendments, no public access is required if there is no existing public access onsite. This amendment is proposed for the same reasons explained above for the change proposed in similar cases for superhighways at proposed N.J.A.C. 7:7E-8.11(o)1i.

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Proposed N.J.A.C. 7:7E-8.11(n)6ii(2) states that for new public highways, including expansions outside the paved constructed development, public access shall be provided onsite unless it can be demonstrated that public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, 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 proposed N.J.A.C. 7:7E-8.11(n)6ii(3). The Department is proposing to recodify this sub-subparagraph as N.J.A.C. 7:7E-8.11(o)2ii and modify it to state that for new public highways, or expansion of existing public highways outside the right-of-way existing as of the effective date of the amendments where the expansion crosses or proposes fill in a tidal waterway, public access shall be provided in accordance with a Department approved Transportation Public Access Plan if one exists or onsite unless it can be demonstrated that public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, 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 is to be provided in accordance with proposed N.J.A.C. 7:7E-8.11(o)2iii. This change is consistent with and made for the same reasons as similar changes to proposed N.J.A.C. 7:7E-8.11(o)1ii. The Department has modified proposed N.J.A.C. 7:7E-8.11(o)2iii(3) to make clear that the option to provide offsite access in accordance with N.J.A.C. 7:7E-8.11(b) is only available if there is no Municipal Public Access Plan.

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As stated above, proposed new N.J.A.C. 7:7E-8.11(o)3 through 7 include the standards, and application and review process for applications, for approval of Transportation Public Access Plans. Just as Municipal Public Access Plans are required to satisfy the goals specified at N.J.A.C. 7:7E-1.1(c) and the public access goals at N.J.A.C. 7:7E-8.11(b), proposed N.J.A.C. 7:7E-8.11(o)3 states that Transportation Public Access Plans must satisfy these same goals. Proposed N.J.A.C. 7:7E-8.11(o)3 also requires that Transportation Public Access Plans must additionally meet the requirements at N.J.A.C. 7:7E-8.11(o)3i through iii. Proposed N.J.A.C. 7:7E-8.11(o)3i provides that Transportation Public Access Plans shall incorporate fishing access and associated amenities where appropriate. N.J.A.C. 7:7E-8.11(o)3ii states that Transportation Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. 7:7E-8.11(u). N.J.A.C. 7:7E-8.11(o)3iii states that Transportation 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 rule). These requirements are similar to the requirements applicable to Municipal Public Access Plans (see proposed N.J.A.C. 7:7E-8.11(d)).

The Department is proposing a new paragraph N.J.A.C. 7:7E-8.11(o)4 that states that a public transportation agency or county seeking approval of a Transportation Public Access Plan shall file an application for approval with the Department. Proposed N.J.A.C. 7:7E-8.11(o)4i through viii lists the elements that must be included in the application. The elements include: a statement

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describing the overall goals of the plan; a public access policy for public roadways included in the plan; a description of potential public access options; a description of the general locations where public access will be provided; a description of general locations where public access will not be provided due to practical limitations; an implementation strategy that describes the forms of public access proposed in order to satisfy the public access policy and measures to be implemented to permanently protect public access; demonstration that at least two public informational meetings have been held to take public comment on the proposed Transportation Public Access Plan and that the applicant notified the Department two weeks in advance of the dates and times of the public meetings so that the Department can provide notice of the public meetings by posting the meeting information on its website and notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and a description of any changes made to the Transportation Public Access Plan as a result of public comments received. These application requirements are similar to the application requirements applicable to Municipal Public Access Plans at N.J.A.C. 7:7E-8.11(e).

A new paragraph is proposed at N.J.A.C. 7:7E-8.11(o)5 which states that the Department shall review an application for approval of a Transportation Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. 7:7E-1.1(c), and the goals for public access at N.J.A.C. 7:7E-8.11(b). Proposed N.J.A.C. 7:7E-8.11(o)5i through vi provides the process by which the Department would review an application for a Transportation Public Access Plan. Proposed N.J.A.C. 7:7E-8.11(o)5i requires the Department to seek public comment on applications for approval of Transportation Public Access Plans by posting the

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proposed Transportation Public Access Plan on the Department's website; notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and publishing notice in the DEP Bulletin. Proposed N.J.A.C. 7:7E-8.11(o)5ii requires the Department to accept public comments on the proposed application for approval of a Transportation Public Access Plan for 30 days following publication of the notice in the DEP Bulletin. Proposed N.J.A.C. 7:7E-8.11(o)5iii provides that after the close of the public comment period, the Department may request revisions to the proposed Transportation Public Access Plan. Proposed N.J.A.C. 7:7E-8.11(o)5iv states that, if revisions are requested, the Department shall, in writing, notify the applicant within 60 days of receipt of the revisions that the proposed Transportation Public Access Plan either satisfies all applicable requirements of this section and is approved, or does not satisfy all applicable requirements of this section and is not approved with explanation. Proposed N.J.A.C. 7:7E-8.11(o)5v states that if no revisions are requested by the Department, the Department shall, in writing, notify the applicant within 60 days of the end of the public comment period that the proposed Transportation Public Access Plan either satisfies all applicable requirements of this section and is approved, or does not satisfy all applicable requirements of this section and is not approved with explanation. Proposed N.J.A.C. 7:7E-8.11(o)5vi requires the Department to provide notice of its determination under proposed N.J.A.C. 7:7E-8.11(o)5iv or v by posting on the Department's website; notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and publishing the determination in the DEP Bulletin. This review process of an application for approval of a Transportation Public Access Plan is similar to the review process for an application for approval of a Municipal Public Access Plans at N.J.A.C. 7:7E-8.11(i).

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These changes provide increased transparency and public participation in the Department review of Transportation Public Access Plans.

The Department is proposing a new paragraph N.J.A.C. 7:7E-8.11(o)6 which provides that a public transportation agency or county which has received approval of a Transportation Public Access Plan shall, as a condition of the approval, every five years after the date of approval submit to the Department a report detailing the status of all projects that have been undertaken in accordance with the Transportation Public Access Plan and any problems encountered in pursuit of the plan's objectives and goals and proposed remedies to assure the objectives and goals of the plan are met. This is consistent with the reporting requirement for Municipal Public Access Plans (see proposed N.J.A.C. 7:7E-8.11(j)4).

A new paragraph N.J.A.C. 7:7E-8.11(o)7 is proposed which specifies that Department review and approval is required before a public transportation agency or county may make changes to an approved Transportation Public Access Plan. This paragraph also requires that in support of a request to amend the approved plan under this subsection, the applicant shall submit to the Department the approved plan with the information specified in N.J.A.C. 7:7E-8.11(o)4 updated to reflect the proposed change and that this submission shall detail how the proposed change affects the approved plan. This paragraph further states that the Department shall review and make a determination on the Transportation Public Access Plan amendment request in accordance with N.J.A.C. 7:7E-8.11(o)5.

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As referenced above, requirements for public access on public highways were proposed to be recodified to N.J.A.C. 7:7E-8.11(n)6 in the March 19, 2012 notice of substantial changes on adoption. As part of this notice of additional substantial changes on adoption, the Department is proposing to recodify these requirements to N.J.A.C. 7:7E-8.11(o) so that they can appear with provisions applicable to applications for and Department review of proposed Transportation Public Access Plans. As a result of that recodification, N.J.A.C. 7:7E-8.11(o), which in the April 4, 2011 notice of proposed amendments included the requirements for marinas and which was not proposed to be amended in the March 19, 2012 notice of substantial changes on adoption, is proposed to be recodified as N.J.A.C. 7:7E-8.11(p), with all cross-references to subsection (o) changed to reference subsection (p).

Also associated with these changes, the Department is proposing herein to recodify proposed N.J.A.C. 7:7E-8.11(q) through (v) as N.J.A.C. 7:7E-8.11(r) through (w), respectively, and N.J.A.C. 7:7E-8.11(y) and (z) as N.J.A.C. 7:7E-8.11(z) and (aa), respectively, without further changes. Proposed N.J.A.C. 7:7E-8.11(w) is proposed to be recodified to N.J.A.C. 7:7E-8.11(x) with a change in reference from proposed subsection (o) to proposed subsection (p). Proposed N.J.A.C. 7:7E-8.11(x) is proposed to be recodified to N.J.A.C. 7:7E-8.11(y) with a change in reference from proposed subsection (x) to proposed subsection (y).

The Department received comments on the provisions proposed for substantial change from the individuals listed below:

1. Elkins Green, New Jersey Department of Transportation

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2. John G. Valeri, Jr., Wolff & Samson PC on behalf of the New Jersey Turnpike Authority

A summary of the comments and the Department's responses follows with respect to those provisions for which substantial changes are proposed. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: In order to utilize N.J.A.C. 7:7E-8.11(n)3i as a uniform method of determining access requirements that is consistent with the manner in which right-of-way projects are developed, it is requested that the public access exception for existing development be expanded to include rehabilitation, renovation, and expansion projects that are both wholly within existing rights-of-way and those that would take place on additional properties later designated as rights-of-way. This revision can be effected by amending the last sentence of proposed N.J.A.C. 7:7E-8.11(n)3i to read: "If there is no existing public access on site, within an existing right-of-way or on property to be added to an existing right-of-way, or if access by the public or pedestrians are prohibited by any law, rule or regulation, including but not limited to N.J.A.C. 19:9-1.9." (2)

RESPONSE: While the Department continues to believe that linear transportation projects should not be exempt from public access requirements when development that crosses or proposes fill in a tidal waterway extends beyond the existing right-of-way, upon further consideration of this comment, it has been determined, as discussed above, that transportation projects should not be subject to stricter requirements than commercial, industrial, or other public development. Therefore, the Department is proposing to modify the public access requirements for public highways, including superhighways, to allow for maintenance, rehabilitation, reconstruction, or expansion to occur entirely within the right-of-way existing as of (the effective date of the amendments), without providing additional public access as long as any existing public access is maintained. This proposed change is consistent with the requirements placed on commercial, industrial, and other public developments where, for existing developments, except for existing developments that are considered new developments,

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where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, no public access is required if there is no existing public access onsite. The parcel for public highways is the right-of-way. In addition, the Department is proposing to clarify that public access is only required for public roadway projects when the new road or expansion crosses or proposes fill in a tidal waterway.

2. COMMENT: Where public access is required, a State agency should have the option of selecting one of the available options under N.J.A.C. 7:7E-8.11(n)3. A State agency should be able to determine the most expedient and cost-effective expenditure of public monies. (1)

RESPONSE: As discussed above, the Department is also proposing to amend proposed N.J.A.C. 7:7E-8.11(o)1ii (recodified from N.J.A.C. 7:7E-8.11(n)6i(2)), which states that for superhighways where the proposed activity is an expansion outside the paved constructed development, public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located. The amendment proposed at this time would allow superhighways, where the proposed activity is an expansion outside the right-of-way existing as of (the effective date of the amendments) and the expansion crosses or proposes fill in a tidal waterway, to provide public access in accordance with one of the following: a Department approved Transportation Public Access Plan; an approved Municipal Public Access Plan; funding to the Department or municipality pursuant to an agreement between the New Jersey Department of Transportation and the Department to be used to provide new or enhanced public access; or offsite on the waterway(s) and within the municipality(s) where the development is located. These changes, except for the option for NJDOT to provide funding to the Department or municipality, are consistent with when public access is required for new commercial, industrial, and other public development when the development is outside the parcel containing the existing development. The Department is adding the provision in this paragraph as well as in N.J.A.C. 7:7E-8.11(o)2iii (recodified from N.J.A.C. 7:7E-8.11(n)6ii(3)) to allow public transportation agencies to choose to satisfy their public access requirements in accordance

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with a Transportation Public Access Plan since many of these agencies have established comprehensive policies, procedures, and standards by which transportation projects are developed. Those policies, procedures, and standards are intended to address many environmental, socioeconomic, and community issues, including public access, when transportation projects are advanced by these agencies. The Department is proposing to add the option for NJDOT to provide funding to the Department or municipality for their public highway projects because, as discussed in the Response to Comment 130 in the notice of substantial changes on adoption to proposed amendments published on March 19, 2012 (see 44 N.J.R. 614(a)), the Department agrees that new public access is not feasible onsite on superhighways, such as the Turnpike or the Parkway, and therefore public access requirements for projects on superhighways may be fulfilled by establishing offsite access and/or by making a monetary contribution if an approved Municipal Public Access Plan with a fund is available. The Department is proposing to add the ability for NJDOT to provide funding to the Department or municipality to be used to provide new or enhanced public access. For example, where legislative appropriations allow NJDOT trust dollars to be directed to the Department's Green Acres Program to provide new or enhanced public access in that municipality, the NJDOT would then have the statutory authority to provide funding. In order to allow NJDOT to provide funding to the Department, the Department is proposing to insert an exception for NJDOT at N.J.A.C. 7:7E-8.11(f)2 to provide for that option.

This public access fund would be used by the Department or the municipality to provide additional or enhanced public access. The ability for NJDOT to provide funding when it is in the best interest of the public access project allows a common sense approach to satisfying public access requirements.

Effect of Proposed Changes on Impact Statements Included in the Original Proposal and in the Notice of Substantial Changes Published on March 19, 2012

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The changes to the proposed amendments will, in most cases, not affect the impact statements or analyses included in the original rule proposal or in the March 19, 2012 notice of substantial changes. However, the Department has determined that there are some changes, discussed below, that will have an effect on the analysis contained in the Social and Economic Impact statements included in the original proposal and the March 19, 2012 notice of substantial changes.

Social Impact of Substantial Changes upon Adoption

The Department recognizes that public transportation agencies have established comprehensive policies, procedures, and standards by which transportation projects are developed that are intended to address many community issues, including public access. Therefore, the proposed changes at N.J.A.C. 7:7E-8.11(c) and (o) providing public transportation agencies and counties with the option to develop and submit for approval a Transportation Public Access Plan suited specifically to the needs of the community, will have a positive social impact. Proposed N.J.A.C. 7:7E-8.11(o)4 requires the applicant to include in an application for approval of a Transportation Public Access Plan, demonstration that at least two public informational meetings were held to take public comment on the proposed plan and that the applicant notified the Department two weeks in advance of the dates and times of the public meetings so that the Department can provide notice of the meetings by posting the meeting information on its website and notifying by e-mail individuals who have requested notice of applications for approval of these plans. In addition, proposed N.J.A.C. 7:7E-8.11(o)5 requires the Department to, upon receipt of an application for approval of a Transportation Public Access Plan, seek public comment on the application by posting the plan on the Department's website; notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and publishing notice in the DEP Bulletin. These changes will provide several opportunities for the public to review and comment on proposed Transportation Public Access Plans prior to the Department making a decision on the application.

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The Department is also proposing to add N.J.A.C. 7:7E-8.11(o)4i, which requires public fishing access and related amenities to be provided as part of a proposed Transportation Public Access Plan where appropriate. This requirement will have a positive social impact by encouraging fishing access for the general public since fishing access has long been recognized as an important part of the Public Trust Doctrine.

Economic Impact of Substantial Changes on Adoption

No significant economic impacts are anticipated to result from the substantial changes on adoption. However, several modest beneficial impacts are likely. Three changes will have a positive economic impact on public highway authorities as well as State and county transportation agencies. Proposed N.J.A.C. 7:7E-8.11(o)1 and 2 specify the requirements for super highways and other public highways. The proposed new language, by recognizing that public highways should not be subject to stricter public access requirements than commercial, industrial, or other public development, will eliminate the need to address public access when maintenance, reconstruction, rehabilitation, or expansion is proposed within the right-of-way existing as of (the effective date of the amendments). The Department also recognizes that public transportation agencies have established comprehensive policies, procedures, and standards by which transportation projects are developed that are intended to address many environmental, socioeconomic, and community issues, including public access. Therefore, the proposed changes at N.J.A.C. 7:7E-8.11(c) and (o) encouraging public transportation agencies and counties to develop and submit for approval a Transportation Public Access Plan that once approved would serve as the document that the agency would follow in determining the provision of public access for transportation projects, are a cost-effective way of achieving an important policy objective, namely the provision of public access to land and waters subject to public trust rights. Addition of the option for NJDOT to satisfy their public access requirement for public highway projects through funding to the Department or the municipality pursuant to an agreement between NJDOT and the Department provides a predictable method of

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satisfying public access requirements and incorporating the cost of public access into the transportation agency's budget.

Full text of the proposed substantial changes to the proposed amendments and the first proposed substantial changes follows (additions to proposal/first proposed substantial changes indicated in underlined italicized boldface ***thus***; deletions from proposal/first proposed substantial changes indicated in double italicized cursive brackets *{{thus}}*):

CHAPTER 7E
COASTAL ZONE MANAGEMENT

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

(a) (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(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 *public access goals*:

1. – 2. (No change from proposal.)

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

i. Public access proposed by an applicant may include any one or combination of the following:

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

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(2) - (5) (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

ii. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

4. - 5. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(c) Development proposed on sites which are located on or adjacent to tidal waterways and their shores shall provide public access *in accordance with (c)1 through {{3}} 4 below.* {Public access in the Hudson River Waterfront Area, as described at N.J.A.C. 7:7E-3.48(a), shall be provided in accordance with N.J.A.C. 7:7E-3.48. Public access for development in other areas shall be provided as follows:} *Municipalities are encouraged to develop and submit to the Department an application for approval of a Municipal Public Access Plan. Public transportation agencies and counties are encouraged to submit to the Department an application for approval of a Transportation Public Access Plan.*

1. In municipalities *from which {have received Department approval of a Municipal Public Access Plan in accordance with (d) through (m) below} the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (k) 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{{, *except in accordance with N.J.A.C. 7:7E-8.11(n)6ii(2)}*};

2. In municipalities *{that do not have an approved Municipal Public Access Plan} from which the Department has not received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (k) below* on or before the date of receipt of a permit application by the Department, access shall be provided in accordance with (n) below, for commercial, residential, industrial and

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public development, and for homeland security facilities~~{,}~~ and ports~~{, and public highways}~~. 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} *the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (k) below*, access shall be provided in accordance with ~~{{(o)}~~ (p) below for marinas, ~~{{(p)}~~ (q) below for piers, ~~{{(q)}~~ (r) below for beach and dune maintenance activities, and ~~{{(r)}~~ (s) below 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.

4. In all municipalities, regardless of whether the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (d) below, public access for public highways shall be provided in accordance with (o) below.

(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 *the public access goals at (b) above{,}*. *Municipal Public Access Plans shall additionally meet the requirements at (d)1 through 4 below*, 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,

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access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules).}

1. - 2. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

3. *Municipal Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. 7:7E-8.11~~{(t)}~~(u).*

4. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(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. – 4. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

5. An implementation strategy that:

i. – iv. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

v. For municipalities *{subject to}* *conducting a shore protection project pursuant to ~~{(r)}~~ (s)* below, identifies how the municipality proposes to provide access points to achieve compliance with that subsection;

vi. – xi. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

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6. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(f) A Municipal Public Access Plan may require a monetary contribution to be used to provide *new or enhanced* 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,}

1. For projects other than linear projects, 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:

Total Contribution = TWC + LAC

where:

TWC = total walkway cost

LAC = land acquisition cost

{1.} i. 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

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portion of the property as measured in feet. This total accessway length is multiplied by 10 feet, the minimum walkway width (subsection $\{(w)\}$ (x) below), 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).

ii. – iii. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

2. For linear projects, other than projects of the New Jersey Department of Transportation which shall provide public access in accordance with (o) below, the amount of 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:

Total Contribution = TWC + LLAC

where:

TWC = total walkway cost

LLAC = linear land acquisition cost

i.- ii. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(g) A Municipal Public Access Plan shall not *{include}* require:

1. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

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{3.} 2. 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)}} (p) below; {or}

{4.} 3. Public access {requirements} at piers. Public access requirements at piers shall be governed by {{(p)}} (q) below{.};

4.-8. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(h) – (m) (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

(n) In municipalities that do not have an approved Municipal Public Access Plan, for sites which are located on or adjacent to tidal waterways and their shores, public access along and use of the beach and the shores shall be provided as {follows} *specified in this subsection and, as applicable, in {{(o)}} (p) below for marinas and {{(p)}} (q) below for piers. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, {The} 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. - 2. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

3. Except as provided at (n)4 and 5 below, industrial development and public development, *except for public highways, shall provide both visual and physical access {as follows:} in accordance with (n)3i through iv below. Public highways shall meet the requirements at {{(n)6}} (o) below.*

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i. – iv. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

4. - 5. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

{{6.}} (o) Public highways, including superhighways, shall provide both visual and physical access as follows. For purposes of this {{paragraph}} subsection, an example of visual and physical access is a sidewalk on or adjacent to a bridge. Public transportation agencies and counties are encouraged to submit to the Department an application for approval of a Transportation Public Access Plan in accordance with (o)3 below:

{{i.}} 1. Superhighways, specifically, the Garden State Parkway, New Jersey Turnpike, Atlantic City Expressway, and Interstates 76, 78, 80, 95, 276, 278, 195, 295, and 676, shall provide access as follows:

{{(1)}} i. Where the proposed activity consists of maintenance, {{or}} rehabilitation, reconstruction, or expansion that remains entirely within the {{paved constructed development}} right-of-way existing as of (the effective date of the amendments), no public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located. Equivalent public access shall include access that provides for opportunities to participate in the same activities, in the same manner and by the same number of people as in the existing public access area;

{{(2)}} ii. Where the proposed activity is an expansion outside the {{paved constructed development}} right-of-way existing as of (the effective date of the amendments) and the expansion crosses or proposes fill in a tidal waterway, public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located{{.}} or in accordance with the following:

(1) A Department approved Transportation Public Access Plan;

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(2) A Department approved Municipal Public Access Plan; or

(3) An agreement between the New Jersey Department of Transportation and the Department specifying the payment of funds to the Department or the municipality to be used to provide new or enhanced public access;

*{{(3)}} **iii.** If the applicant demonstrates that offsite public access in the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with **{{(n)6i(1)}} (o)1i** and **{{(2)}} ii** above, equivalent offsite public access shall be provided on the same waterway(s) within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with **(b)** above.*

***{{ii.}} 2.** Public highways, other than superhighways, shall provide both physical and visual access as follows:*

***{{(1)}} i.** For existing public highways, except as provided at **{{(n)6ii(2)}} (o)2ii** below, where the proposed activity consists of the maintenance, reconstruction, **{{or}}** rehabilitation, or expansion that remains entirely within the **{{paved constructed development}}** right-of-way existing as of (the effective date of the amendments), no public access is required if there is no existing public access onsite. Any 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, in the same manner and by the same number of people as in the existing public access area.*

***{{(2)}} ii.** For new public highways, **{{including expansions outside the paved constructed development,}}** or expansion of existing public highways outside the right-of-way existing as of (the effective date of the amendments) where the new public highway or expansion crosses or proposes fill in a tidal waterway, public access shall be provided in accordance with a Department approved Transportation Public Access Plan if one exists or onsite unless it can be demonstrated that public access is not practicable based on the risk of*

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injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, 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 o)2iii below;

iii. Where a Transportation Public Access Plan does not exist and 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, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no reasonable measures can be taken to avert these risks, equivalent public access shall be provided in accordance with the following:

(1) Offsite on the waterway(s) and within the municipality(s) where the development is located where the access is consistent with the municipality's Municipal Public Access Plan;

(2) Consistent with an agreement between the New Jersey Department of Transportation and the Department specifying the payment of funds to the Department or the municipality to be used to provide new or enhanced public access; or

(3) In accordance with (b) above if there is no Municipal Public Access Plan;

iv. If the applicant demonstrates that offsite public access in the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with o)2ii and iii above, equivalent offsite public access shall be provided on the same waterway(s) within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above.

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3. *Transportation Public Access Plans shall satisfy the goals specified at N.J.A.C. 7:7E-1.1(c) and the public access goals at (b) above. Transportation Public Access Plans shall additionally meet the requirements at (o)3i through iii below:*

i. *Transportation Public Access Plans shall incorporate fishing access and associated amenities where appropriate.*

ii. *Transportation Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. 7:7E-8.11(u).*

iii. *Transportation 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).*

4. *A public transportation agency or county seeking approval of a Transportation Public Access Plan shall file an application for approval with the Department. The application shall include a proposed Transportation Public Access Plan consisting of the following elements:*

i. *A statement describing the overall goals of the Transportation Public Access Plan;*

ii. *A public access policy for public roadways included in the Transportation Public Access Plan;*

iii. *A description of potential public access options;*

iv. *A description of the general locations where public access will be provided;*

v. *A description of the general locations where public access will not be provided due to practical limitations;*

vi. *An implementation strategy that describes the forms of public access proposed in order to satisfy the public access policy and measures to be implemented to permanently protect public access;*

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- vii. Demonstration that at least two public informational meetings have been held to take public comment on the proposed Transportation Public Access Plan and that the applicant notified the Department two weeks in advance of the dates and times of the public meetings so that the Department can provide notice of the public meetings by posting the meeting information on its website and notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and
- viii. A description of any changes made to the Transportation Public Access Plan as a result of public comments received.

5. The Department shall review an application for approval of a Transportation Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. 7:7E-1.1(c), and the goals for public access at (b) above as follows:

i. Upon receipt of an application for approval of a Transportation Public Access Plan that meets the requirements of (o)4 above, the Department shall seek public comment on the application by:

(1) Posting the proposed Transportation Public Access Plan on the Department's website;

(2) Notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and

(3) Publishing notice in the DEP Bulletin.

ii. The Department shall accept public comments on the proposed application for approval of a Transportation Public Access Plan for 30 days following publication of the notice in the DEP Bulletin.

iii. After the close of the public comment period, the Department may request revisions to the proposed Transportation Public Access Plan.

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iv. If revisions are requested, the Department shall, in writing, notify the applicant within 60 days of receipt of the revisions that the proposed Transportation Public Access Plan either:

(1) Satisfies all applicable requirements of this section and is approved; or

(2) Does not satisfy all applicable requirements of this section and is not approved with explanation.

v. If no revisions are requested by the Department, the Department shall, in writing, notify the applicant within 60 days of the end of the public comment period that the proposed Transportation Public Access Plan either:

(1) Satisfies all applicable requirements of this section and is approved; or

(2) Does not satisfy all applicable requirements of this section and is not approved with explanation.

vi. The Department shall provide notice of its determination under (o)5iv or v above by:

(1) Posting on the Department's website;

(2) Notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and

(3) Publishing the determination in the DEP Bulletin.

6. A public transportation agency or county which has received approval of a Transportation Public Access Plan shall as a condition of the approval, every five years after the date of approval, submit to the Department a report detailing:

i. The status of all projects that have been undertaken in accordance with the Transportation Public Access Plan; and

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

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7. Department review and approval is required before a public transportation agency or county may make changes to an approved Transportation Public Access Plan. In support of a request to amend the approved plan under this subsection, the applicant shall submit to the Department the approved plan with the information specified in (o)4 above updated to reflect the proposed change. This submission shall detail how the proposed change affects the approved plan. The Department shall review and make a determination on the Transportation Public Access Plan amendment request in accordance with (o)5 above.

{{(o)}} (p) Marinas, as defined at N.J.A.C. 7:7E-7.3(d)1, shall provide both visual and physical public access {as follows:} in accordance with this subsection. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, 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.

1. For existing marina development where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel {which included} containing the existing development, no public access is required if there is no existing public access onsite, except as provided at {{(o)3}} (p)3 below. Any 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

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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 (o)3 below/;

2. - 3. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

4. Applicants for new marinas, as described at ~~o2~~ p2 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:

i. - ii. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

5. (No change from original proposal as modified by March 19, 2012 notice of substantial changes.)

Recodify proposed (p) – (v) as q – w (No change in text from original proposal as modified by March 19, 2012 notice of substantial changes.)

~~w~~ x If a public accessway is chosen to satisfy the public access requirement in (n) and ~~o~~ p 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.

[m] ~~x~~ y 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 waterfront

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areas, may be charged in accordance with [(m)1] ~~1~~ 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.)

Recodify proposed (y) – (z) as (z) – (aa) (No change in text from proposal.)