

**ENVIRONMENTAL PROTECTION
OFFICE OF POLICY, PLANNING AND SCIENCE
COASTAL MANAGEMENT OFFICE**

Coastal Zone Management Rules

Public Access

Proposed Amendments: N.J.A.C. 7:7E-8.11 and 8A

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:19-1 et seq., 12:3-1 et seq., 12:5-3 and 13:9A-1 et seq.; Public Trust Doctrine (see *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 185 N.J. 40 (2005)).

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

DEP Docket Number: 26-07-11/663

Proposal Number:

Public hearings concerning this proposal will be held as follows:

Wednesday, January 16, 2008 at 1:00 P.M. to 4:00 P.M. or close of comments, whichever occurs first, at:

New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, NJ 08625

Thursday, January 17, 2008 at 11:00 A.M. to 2:00 P.M. or close of comments, whichever occurs first, at:

Ocean County Administration Building
101 Hooper Avenue
Room 119
Toms River, NJ 08754

Submit written comments by February 15, 2008 to:

Gary J. Brower, Esq.
Office of Legal Affairs
Attn: DEP Docket Number 26-07-11/663
NJ Department of Environmental Protection
401 East State Street, Floor 4
P.O. Box 402
Trenton, NJ 08625-0402

The proposal can be viewed or downloaded on the Department's web site at <http://www.state.nj.us/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 amendments to the Coastal Zone Management rules, N.J.A.C. 7:7E. Published elsewhere in this issue of the New Jersey Register is the adoption of new and amended rules that are intended to ensure the protection of public rights protected by the Public Trust Doctrine. The Public Trust Doctrine holds that rights to tidal waterways and their shores in the State are held by the State in trust for the

benefit of all the people. It also establishes the right of the public to fully utilize these lands and waters for a variety of public uses. As interpreted in New Jersey, public rights protected under the Public Trust Doctrine include environmental protection as well as recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating along the various tidal waterways and their shores. Public trust rights include both access to and use of tidal waterways and their shores. The adopted new and amended rules will ensure that the public's rights continue to be protected and that improvements are accomplished, such as assuring that parking and restroom facilities are available, to provide families and others a realistic and meaningful opportunity to enjoy the public's resources. Further, the adopted rules contain access standards for all coastal development, as well as specific standards for municipalities participating in Shore Protection Program funding and for municipalities, counties and nonprofit organizations seeking to receive Green Acres Program funding for a project located along a tidal waterway.

The proposal of the amendments and new rules that are being adopted at this time elsewhere in this issue of the New Jersey Register included broad public access requirements to protect public access rights under the Public Trust Doctrine while assuring that access to be provided did not create a dangerous condition for those members of the general public seeking to enjoy the waterfront, such as at port facilities and other areas where necessary water-related operations may create conditions not conducive to safe recreational uses. (Insert public access adoption N.J.R. citation) In response to the previous proposal, the Department received comment from numerous individuals and groups. Among these comments were comments suggesting that access requirements be modified in various situations to strike a better balance between public access rights and the conduct of desirable water-dependent uses such as marinas. The Department has summarized and addressed those comments in the adoption published elsewhere in this issue of the New Jersey Register; explaining why it did not agree that many requested changes would be appropriate, agreeing to make those changes that the Department found to be appropriate that were possible on adoption without the need for

further public notice and comment, and agreeing to propose other amendments for public input.

The amendments proposed herein address comments received from legislators, local officials, and the public that could not be addressed in the concurrent adoption without further public notice and comment. The Department is proposing amendments to N.J.A.C. 7:7E-8.11(f) to provide for modification of the linear public access along a tidal waterway at commercial marinas, along superhighways, and for homeland security purposes. The Department is proposing amendments to N.J.A.C. 7:7E-8.11(p) and 8A.2 to modify the requirements for municipalities participating in Shore Protection Program funding through a State Aid Agreement for projects located along the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores.

Amendments are also proposed to the Green Acres funding requirements at N.J.A.C. 7:7E-8.11(q). The proposed amendments change the timing for Green Acres applicants to submit a public access plan and Public Access Instrument, where applicable, but not the substance of the plan or instrument. This will enable an applicant for Green Acres funding for a project located along a tidal waterway to await approval of Green Acres funding prior to developing those documents, rather than submit documents at time of Green Acres application.

The following is a section-by section description of the proposed amendments.

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

Subchapter 8 Resource Rules

N.J.A.C. 7:7E-8.11 Public trust rights

N.J.A.C. 7:7E-8.11(d) requires development on or adjacent to tidal waterways and their shores to provide on-site, permanent, unobstructed public access to the tidal waterway and its shores at all times, including both visual and physical access. The public accessways and public access areas shall include perpendicular access and a linear area along the tidal waterway and its entire shore. N.J.A.C. 7:7E-8.11(e) contains additional requirements for the perpendicular access and linear area provided for sites located along certain major waterways in the State. The Department recognizes that the

linear public access required by N.J.A.C. 7:7E-8.11(d) and (e) may not always be practicable on-site or for the entire shore and that an alternative route or area may be necessary, such as areas where bulk cargo or container ships are being loaded and unloaded. Accordingly, existing N.J.A.C. 7:7E-8.11(f) sets forth seven situations, each with specific criteria, in which modification of the permanent on-site public access requirements at N.J.A.C. 7:7E-8.11(d) and (e) may be allowed.

Comments were received from the New Jersey Department of Transportation questioning whether linear public access would be feasible or appropriate on public roadways, due to possible obstructions, heavy truck traffic, and vehicles traveling at high speeds. In light of this comment, the Department considered the various types of public roadways and roadway projects it has reviewed for a coastal permit, and how public access could best be accomplished in those situations. The Department viewed superhighways, such as the Garden State Parkway or New Jersey Turnpike, as similar in nature to airports and railroads, for which exceptions to onsite linear access are set forth at N.J.A.C. 7:7E-8.11(f)3. Accordingly, the Department is proposing to amend N.J.A.C. 7:7E-8.11(f)3 to provide an exception to perpendicular access and/or a linear access area along the entire shore of the tidal waterway for development of new superhighways, or modification of existing superhighways. As a result, if it were demonstrated that such access were not practicable based on risk of injury or substantial existing and permanent obstacles, and no measures could be taken to avert the risks, alternate public access could be provided. The superhighways that are subject to this provision are the Garden State Parkway, New Jersey Turnpike, Atlantic City Expressway, and Interstates 76, 78, 80, 95, 276, 278, 195, 295, and 676. These are all of the superhighways within New Jersey's coastal zone. The phrase "at the site" has been added to clarify that the standard relates specifically at the proposed development site, and not along the tidal waterway beyond the site.

Comments were received from many marina owners on the requirement for linear access at marinas. Commenters indicated that site constraints at existing marinas may preclude the marina from providing linear access along the entire waterway. Such constraints include existing boat repair and handling operations and existing buildings.

Comments also elaborated on the importance of commercial marinas to the State's commerce and tourism industry, their water dependent nature, and the fact that they bring people to the State's tidal waters to engage in water dependent uses such as fishing and boating. Recognizing the above, and in order to provide flexibility to apply the rules in a manner that provides the public with the greatest access to and enjoyment of public trust resources, and recognized the existing constraints at these important water dependent developments, the Department is proposing a new N.J.A.C. 7:7E-8.11(f)8 to allow the reconfiguration of the required linear public accessway to accommodate existing site constraints at existing commercial marinas.

Marina owners commenting on the requirement for linear access at marinas also expressed concern about the safety of providing a public walkway in the area where heavy boat moving equipment is in operation, such as travel lifts or fork lifts. This equipment is used to move boats to and from the water. The Department agrees that such operations may pose a safety concern, and therefore is proposing a new N.J.A.C. 7:7E-8.11(f)9 to allow the required linear public access area to follow the shortest possible alternate route around the heavy boat moving operation.

Although the adopted rule, at N.J.A.C. 7:7E-8.11(f)3, provides for exceptions to public access for energy facilities, industrial uses, port uses, airports, railroads, or military facilities where risk of injury from hazardous operations exists, and provides for temporary closure of public access areas due to exigent circumstances or public safety or security, it does not specifically address homeland security concerns. Both the State and the Federal government have enacted laws and implemented protective measures to enhance homeland security. Among those laws are the Maritime Transportation Security Act (MTSA) of 2002 (46 U.S.C. 701 et seq.), Section 550 of the Homeland Security Appropriations Act of 2007 (the Chemical Facility Anti-Terrorism Standards) (P.L. 109-295 (2006)), and the New Jersey Domestic Security Preparedness Act (N.J.S.A. App. A:9-64 et seq.). These laws may require measures at certain facilities to protect against potential terrorism that preclude the full linear and perpendicular public access that is required under N.J.A.C. 7:7E-8.11(d) and (e). Accordingly, the Department is proposing to amend N.J.A.C. 7:7E-8.11(f) by adding a new provision at (f)10 to address homeland

security risk. Specifically, the Department proposes that where development that would impact 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 access and/or a linear area along the entire shore of the tidal waterway is not practicable because it poses an unacceptable homeland security risk, the public access requirements of N.J.A.C. 7:7E-8.11(d) and (e) could be modified. Where public access is not precluded for the entire site, enhanced access would be provided at a portion of the site. Where public access is precluded for the entire site, alternate public access of comparable use to the public must be provided at a nearby off site location.

In response to comments on the proposal, the Department is proposing amendments to the parking requirements at N.J.A.C. 7:7E-8.11(j)1. N.J.A.C. 7:7E-8.11(j)1 requires that developments that propose to reduce existing on-street parking that is used by the public for access to tidal waterways and their shores, mitigate for the loss of these parking spaces by creating new parking spaces within the proposed development site or within 250 feet of the proposed development site. The linear nature of public roadways, coupled with limitations presented by existing development and rights-of-way, may present constraints that prevent public roadway projects from creating new parking within 250 feet of the project site. However, parking in proximity to tidal waterways and their shores is essential to enabling the public to access and use these public trust resources. The Department is proposing to amend N.J.A.C. 7:7E-8.11(j)1 to allow mitigation for loss of public parking to occur within one-quarter mile of a public roadway project site if mitigation cannot be accomplished within 250 feet. This will enable these public roadway projects, which provide a public benefit, to proceed, while ensuring that parking for public access continues to be provided within a reasonable distance of the tidal waterway.

In keeping with the tenets of the Public Trust Doctrine, the rule continues to provide at N.J.A.C. 7:7E-8.11(o) that no modification of the public access requirements at a site relinquishes the public trust rights of access to and use of the tidal waterways and their

shores. Thus the public trust rights of access to and use of these lands and waters are retained so that, if circumstances change in the future, public access will be provided.

Shore Protection Program Funding

New Jersey's Shore Protection Program was created through State legislation, N.J.S.A. 12:6A-1 et seq. to provide for the protection of life and property along the coast, preserve the vital coastal resources of New Jersey, and maintain safe and navigable waterways throughout the State. The Shore Protection Program is administered through the Department's Office of Engineering and Construction. Among other things, this Office is responsible for administering shore protection projects, including beach nourishment projects, throughout the State. Projects vary in type and scope, including beach nourishment and dune creation projects, shorefront bulkheads, jetties, groins, and revetments. The Shore Protection Program funds shore protection projects through either a Federal-State-local cost share or a State-local cost share. There is often a significant Federal contribution of funds to shore protection projects, particularly beach nourishment projects.

Shore protection projects often are constructed along areas subject to the Public Trust Doctrine and significant amounts of public funds are invested in these projects. In recognition of the importance of public access and the State's role to hold tidal waterways and their shores in trust for the public and to ensure that the public has access to and use of these lands and waters, N.J.A.C. 7:7E-8.11(p) contains specific public access requirements that must be met by municipalities seeking to participate in the Shore Protection Program. A municipality must enter into a State Aid Agreement to participate in Shore Protection Program funding. The State Aid Agreement is a cost sharing agreement, and the standards at (p) must be met by any municipality that participates in Shore Protection Program funding through a State Aid Agreement. The regulations will ensure that municipalities meet their obligations under the Public Trust Doctrine and take steps to enhance public access to tidal waterways and their shores within the municipality. These steps include identification of municipal lands and waters subject to the public trust, identification of access to these lands, consideration of fees charged to

access these lands, provision of facilities to enhance use of these lands, and enactment of measures to ensure continued implementation of public access provisions.

In addition to these requirements that apply to Shore Protection Program funding along any tidal waterway, N.J.A.C. 7:7E-8.11(p)7 contains specific standards 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. These standards provide specificity with respect to public access conditions, including linear and perpendicular access to tidal waterways and their shores, the frequency of perpendicular access, and restroom and parking requirements. These four waterways were singled out because of the tremendous demand for access to the State's beaches, and recognizing that projects along these waterways are frequently of larger scope and constructed in multiple phases. For shore protection projects along these waterways, N.J.A.C. 7:7E-8.11(p)7 requires that the public access provisions be met for all beaches along the waterway where the project is proposed, rather than just within the project area, as established at N.J.A.C. 7:7E-8.11(p)8 for other tidal waterways. Specifically, these provisions include providing public access to the beaches (N.J.A.C. 7:7E-8.11(p)7ii), obtaining conservation restrictions to maintain that access (N.J.A.C. 7:7E-8.11(p)7i(1)), and providing perpendicular public accessways to the beach every one-quarter mile, with signs identifying those accessways (N.J.A.C. 7:7E-8.11(p)7iii and vi).

Many commenters objected to the requirements for public access associated with State funding of shore protection projects, particularly to placing the responsibility and costs of compliance on municipalities, which they perceive as potentially delaying needed shore protection projects. Others supported the requirements, particularly in light of the amount of public funds that go into constructing these projects. The Department has considered these comments, the fact that the shore protection projects, including beach nourishment, along these waterways are often conducted in phases over time, and the fact that Federal funding is often available only for one phase of a project at a given point in time, and that such Federal funding may expire if not used by the State in a timely manner. Accordingly, the Department is proposing to amend to N.J.A.C. 7:7E-8.11(p)7i, ii and iii to apply the conservation restriction, public access and one-quarter

mile perpendicular requirements to the shore protection project and where the project is a structure, the entire beach or shore outshore of that structure, rather than the entire beach for those shore protection projects located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores as described in detail below.

Shore protection projects vary in type and scope, and include, but are not limited to, beach nourishment, dune creation, shorefront bulkheads, jetties, groins, and revetments. Therefore, and in order to use consistent terminology, the Department is proposing to replace the phrases “shore protection or beach nourishment project”, “shore protection and beach nourishment projects,” “project,” and “shore protection project or nourished beach”, found in the rule at N.J.A.C. 7:7E-8.11(p)2, 7, 8 and 9, with the phrase “shore protection project.” Where the term “shore protection and beach nourishment project” is first used at N.J.A.C. 7:7E-8.11(p)7, the Department is proposing to amend the rule to “shore protection project, including beach nourishment project” for consistency in terminology throughout the rule, and, to make it clear that beach nourishment is a form of construction. The Department is proposing to replace the terms “project construction” and “construction” with “construction, including beach nourishment” at N.J.A.C. 7:7E-8.11(p)3, 4, 5, 7, and 8 for these same reasons. In addition, for the purposes of consistency in terminology, the Department proposes to amend N.J.A.C. 7:7E-8.11(p)7v to replace the phrase “along that portion of the waterway on which the project occurs” with the phrase “within and outshore of the shore protection project.”

The Department proposes to amend N.J.A.C. 7:7E-8.11(p)7i(1) to provide that a Department-approved conservation restriction is required only to maintain the entire shore protection project for public access in perpetuity rather than to maintain the shore protection project plus all beaches within the municipality along the waterway on which the project occurs for public access in perpetuity. Similarly, the amendments proposed at N.J.A.C. 7:7E-8.11(p)7ii, iii and vi would require that public access be provided for the length of the shore protection project, along with signed perpendicular public accessways to the entire shore protection project every one-quarter mile, immediately upon completion of construction including beach nourishment, rather than to the shore protection project plus all beaches within the municipality along the waterway on which

the project occurs. For the purposes of consistency in terminology, the Department is proposing to modify N.J.A.C. 7:7E-8.11(p)7iv to refer to the length of the shore protection project. The provisions at N.J.A.C. 7:7E-8.11(p)7iii(1)(A) which allow for the one-quarter mile perpendicular access to be exceeded if it is met on average, is being modified to reflect the application of the requirement to the shore protection project area only.

The Department is proposing to amend N.J.A.C. 7:7E-8.11(p)8v to make it clear that the posting of signs for shore protection projects located in waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores applies to the area of the shore protection project only. This change is consistent with the changes proposed at N.J.A.C. 7:7E-8.11(p)7vi.

Green Acres Program Funding for a Green Acres Project Site

New Jersey's Green Acres Program, was created in 1961 to meet New Jersey's growing recreation and conservation needs. The Green Acres Program uses a stable source of funding provided by the Garden State Preservation Trust Act. The Green Acres Local and Nonprofit funding programs provide low interest loans and grants to municipal and county governments and matching grants to nonprofit organizations to acquire open space and develop outdoor recreation facilities. Many of the municipalities, counties and nonprofit organizations receive Green Acres funding for park development projects or land acquisition projects that contain or are located adjacent to tidal waterways and their shores. In addition, municipalities frequently hold other lands that are on or adjacent to tidal waterways and their shores and thus are impressed by public trust rights. To ensure that Green Acres funded development projects and acquisitions located on these tidal waterways and their shores provide access to lands and waters subject to public trust rights, and that municipalities, counties and nonprofit organizations fulfill their obligations under the Public Trust Doctrine for lands that they control, the adopted rule at N.J.A.C. 7:7E-8.11(q) sets forth eligibility standards for Green Acres funding for a Green Acres project, which is a site that contains or is adjacent to tidal waterways and their shores.

N.J.A.C. 7:7E-8.11(q)1 requires that municipalities, counties and nonprofit organizations submit to the Department for approval prior to application for Green Acres funding for a Green Acres project site, a draft public access plan. The public access plan must contain information such as maps of tidal waterways, and streets and other accessways leading to tidal waterways; a beach fee schedule, if applicable; and a statement demonstrating compliance with this rule. The requirements of the public access plan are set forth at N.J.A.C. 7:7E-8A.2 for municipalities and N.J.A.C. 7:7E-8A.3 for counties and nonprofit organizations.

In order to ensure that the public access plan is implemented, N.J.A.C. 7:7E-8.11(q)1i requires municipalities and counties to also submit, prior to application for Green Acres funding, a draft ordinance that would adopt the public access plan document. N.J.A.C. 7:7E-8.11(q)5 requires that the municipal applicants also submit a draft Public Access Instrument prior to application for Green Acres funding for a Green Acres project site. A Public Access Instrument is a conservation restriction recorded by the municipality to ensure maintenance in perpetuity of the municipal streets and other dedicated public rights-of-way leading to tidal waterways and their shores that are identified in the public access plan. The Public Access Instrument is required to guarantee that the public will continue to be able to reach lands and waters subject to the public trust for generations to come, by transferring to the Department any rights of the municipality or county to vacate, divert or dispose of these areas.

As described above, the rule currently requires that submission of the public access plan and the Public Access Instrument, where applicable, occur prior to application for Green Acres funding for a Green Acres project site. This timing was intended to ensure, at the time of Green Acres application, that applicants were eligible for Green Acres funding under the criteria of this rule. The Green Acres funding process can be lengthy, with numerous steps set forth in the Green Acres rules at N.J.A.C. 7:36. Among the milestones in the process are the submission of an application; the notification to the applicant of the funding award by letter from the Department; the passage of a legislative appropriation bill committing funds to the project; the signing of a project agreement by

the applicant and the Department; the completion of the land acquisition or park development project; and the disbursement of funds.

The Department has reassessed the timing for submission of the public access plan and Public Access Instrument, and determined that applicants should be provided additional time to prepare these documents. By modifying the timing of submission of the public access plan and Public Access Instrument, an applicant would be notified of a funding award prior to being required to develop and submit these documents. This will continue to provide the Department with adequate time to review these documents prior to the release of any funds while assuring that applicant resources are not unnecessarily used on projects which ultimately are not granted funding. To facilitate this change, the Department is proposing to amend N.J.A.C. 7:7E-8.11(q)1 to allow an applicant for Green Acres funding for a project located along a tidal waterway to submit with its Green Acres application, at its option, either the public access plan and Public Access Instrument, as applicable, or a certification that complies with the requirements of proposed new N.J.A.C. 7:7E-8.11(q)1i.

If a public access plan and Public Access Instrument are not submitted as part of a Green Acres funding application, proposed new N.J.A.C. 7:7E-8.11(q)1i would require Green Acres funding applicants to certify that they will undertake three actions within 90 days of receipt of a letter from the Department notifying the applicant that its application for Green Acres funding has been approved. First, in accordance with proposed new N.J.A.C. 7:7E-8.11(q)1i(1), the applicant must certify that it will submit the required public access plan. Second, pursuant to proposed new N.J.A.C. 7:7E-8.11(q)1i(2), the applicant must certify that it will comply with the requirements of the rule at N.J.A.C. 7:7E-8.11(q) 2 through 5 (currently codified as (q)1 through 4). Lastly, under proposed new N.J.A.C. 7:7E-8.11(q)1i(3), if the applicant is a municipality, the applicant must certify that it will submit the Public Access Instrument within the 90 day period. Existing N.J.A.C. 7:7E-8.11(q)1i, which requires a municipality or county to submit a draft ordinance adopting the public access plan, is being recodified as N.J.A.C. 7:7E-8.11(q)1ii, and is to be submitted with the plan. Accordingly, submission of the public access plan and for municipalities, Public Access Instrument and ordinance, may occur as

part of the application for Green Acres funding for a Green Acres project site, or within 90 days of receipt of the letter from the Department notifying the applicant that their application for Green Acres funding for a Green Acres project site has been approved.

Proposed new N.J.A.C. 7:7E-8.11(q)2 requires that the public access plan, and Public Access Instrument where applicable, be submitted within 90 days of receipt of a letter from the Department notifying the applicant that its application for Green Acres funding has been approved. Proposed new N.J.A.C. 7:7E-8.11(q)2 also specifies that the Department will not enter into a Green Acres project agreement prior to Department approval of the public access plan, and Public Access Instrument, as applicable. Existing N.J.A.C. 7:7E-8.11(q)2 through 12 are proposed to be recodified as (q)3 through 13 to reflect the addition of proposed new N.J.A.C. 7:7E-8.11(q)2. References to N.J.A.C. 7:7E-8.11(q)1 through 4 at existing N.J.A.C. 7:7E-8.11(q)5 and 7 are proposed to be amended to reflect the changes in codification. Existing N.J.A.C. 7:7E-8.11(q)5iii (proposed N.J.A.C. 7:7E-8.11(q)6ii) is proposed to be amended to clarify that the ordinance adopted under this provision is the ordinance adopting the public access plan. In addition, changes to cross references throughout this subsection are proposed to reflect proposed new N.J.A.C. 7:7E-8.11(q)2.

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

N.J.A.C. 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

The amendments proposed to N.J.A.C. 7:7E-8.11(p) necessitate complementary changes in N.J.A.C. 7:7E-8A.2. This section identifies the information that must be included in a public access plan submitted by a municipality to participate in Shore Protection Program funding. In order to provide an overview of restroom and parking facilities within the municipality that provide access to tidal waterways and their shores,

all such existing and proposed facilities are to be shown on a tax map, in accordance with new proposed N.J.A.C. 7:7E-8A.2(c)2. This will allow for easy identification of facilities, the availability of which forms the basis for the approval of any grant funding, both for purposes of reviewing the grant application and to ensure that there is no confusion as to the need to keep these facilities available in the future. Existing N.J.A.C. 7:7E-8A.2(c)2, adopted elsewhere in this issue of the New Jersey Register, contains specific requirements 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. This paragraph is proposed to be recodified as N.J.A.C. 7:7E-8A.2(c)3, and amended as follows. Since the requirements have been limited to the length of the shore protection project rather than the entire beach along the waterway on which the project occurs, the public accessways and facilities must be shown on a site plan rather than at the scale of a tax map only. Site plans provide the level of detail that is more appropriate given that the requirement has been reduced in scope. The requirements in existing N.J.A.C. 7:7E-8A.2(c)2i and ii (proposed N.J.A.C. 7:7E-8A.2(c)3i and ii) are proposed to be modified to pertain only to the project area. Thus, the site plan must only identify the proposed public restrooms for the length of the shore protection project and within one-quarter mile of where the shore protection project is proposed. The same would apply to the requirement to identify parking locations for the public to access the project, including the nourished beach.

In order to use consistent terminology, the phrase “shore protection and beach nourishment projects” at existing N.J.A.C. 7:7E-8A.2(b)4i and (c)2 and 3 is being replaced with the phrase “shore protection projects, including beach nourishment”.

Social Impact

The newly adopted rule at N.J.A.C. 7:7E-8.11 clarifies the public’s rights to access and use tidal waterways and their shores, rights which are afforded by the Public Trust Doctrine, and incorporates standards necessary to protect these rights when development is proposed on and adjacent to the State’s tidal waterways and their shores. The public’s

right to access and use such lands is not only important for the recreational opportunities offered along the coast; it is an essential public right that has been established for centuries.

The proposed amendments would continue to require public access when development is proposed along tidal waterways and their shores. However, the amendments would allow alternative methods of access in various situations to strike a better balance between public access rights, public safety and the conduct of various desirable water-dependent uses. Specifically, alternate access can be provided where appropriate to account for special circumstances related to homeland security, superhighways, and marinas. The homeland security amendments will ensure that these rules do not preclude measures at certain facilities that are necessary for homeland security, while also ensuring that public access is afforded on-site, if possible, or in a nearby off site location. The proposed exception for development at a superhighway will ensure that roadway improvements that are necessary, particularly in this densely developed state, can be undertaken while continuing to accommodate public access in a manner that does not put those seeking to enjoy the State's waterfront areas at risk. For marinas, the exceptions will continue to provide for public access at marinas, but will allow configuration of such access in a way that will be conducive to marina operations while assuring that the public can utilize the waterfront safe from potential danger from heavy boat handling equipment. This will allow marina operations to continue, and marinas to continue to bring people to the water to engage in water dependent uses such as fishing and boating. These proposed amendments will result in a positive social impact.

The adopted rule requires that developments that would reduce existing on-street or off-street parking that is used by the public to access tidal waterways and their shores replace that parking within 250 feet of the development site. The provision of parking is an important aspect of public access, as it is necessary to be able to access tidal areas. However, the Department recognizes that accomplishing public roadway projects is also a social benefit. The proposal to increase the distance within which replacement parking must be created from 250 feet to one-quarter mile for public roadway projects will have a

positive social impact in that it will facilitate public roadway projects, but will maintain parking close enough to tidal waters to continue to access them.

The proposed amendments to the provisions of the Public trust rights rule pertaining to municipalities, counties and non-profit organizations applying for Green Acres funding will have a positive social impact. These amendments will not impact the public access required to be provided, but will provide applicants more time to prepare required public access plans and municipalities more time to prepare required Public Access Instruments, so as not to delay application for and approval of Green Acres acquisition and park development projects on tidal waterways.

The remaining amendment proposed is to change the scope of the beach access required when a municipality enters into a State Aid Agreement for a Shore Protection Program for a shore protection project located along the Atlantic Ocean, Raritan Bay, Sandy Hook Bay or Delaware Bay. For these four waterways, the rule adopted elsewhere in this issue of the New Jersey Register requires that public access and perpendicular accessways be provided to all beaches in the municipality that are along the waterway where the project is proposed. The proposed amendments modify that requirement to the area of the shore protection project. This amendment will have a negative social benefit, insofar as it would not require that all private beach areas within municipalities receiving State Shore Protection funds be open to the public as a condition of shore protection funding, and it would allow for less frequent perpendicular accessways to reach beaches in the municipality outside of the area of the shore protection project. However, the rule will continue to require access to the shore protection project and the beach out shore of a shore protection structure, accessways to the beach every one-quarter mile, restrooms every one-half mile, and parking in areas where State or Federal dollars are being spent for shore protection through a State Aid Agreement and will allow shore protection projects to proceed in non-exclusive portions of municipalities that are willing to provide the required public access. Federal funding is often available only for one phase of a project at a given point in time and may expire if not used by the State in a timely manner. This amendment will provide an offsetting positive social impact by assuring

that federal funds allotted for specific projects are not lost for those areas where a municipality provides the necessary public access.

Economic Impact

Much of the economic viability of shore communities is based on tourism. A primary reason that people go to the Jersey shore is to access the water. Atlantic, Cape May, Ocean and Monmouth Counties alone accounted for more than 61 percent or \$23 billion in annual economic activity in 2006, when the travel and tourism industry in New Jersey contributed \$37.6 billion in economic activity. Tourism employment in these counties is significant. The public access rule ensures that access to the waterfront is provided and the corresponding positive economic impacts continue.

The proposed changes to the rule at N.J.A.C. 7:7E-8.11(f) provide exceptions to the requirement for linear access along tidal waterways for development of or modifications to a superhighway or a marina, as well as in instances where limiting access is necessary for homeland security purposes. The proposed amendments at N.J.A.C. 7:7E-8.11(j) increase the distance from a public roadway project that parking can be replaced. Although the Department did not consider there to be significant economic impacts from the adoption of the Public trust rights rule on such facilities, this proposal will provide a positive economic impact by reducing any impacts by providing greater flexibility in the design of public access while additionally assuring that alternatives are allowed that ensure that the public seeking to enjoy access to the waterfront is not put in danger.

The Public trust rights rule requires public access for proposed development that requires a coastal permit from the Department, and also requires public access plans for participation in the State's Shore Protection or Green Acres Program funding for a project located along a tidal waterway. The Department is proposing to amend the standards at N.J.A.C. 7:7E-8.11(p) that pertain specifically to municipalities entering into a State Aid Agreement for a shore protection project along the Atlantic Ocean, Raritan Bay, Sandy Hook Bay or Delaware Bay. The adopted rule requires that public access and perpendicular accessways be provided to all beaches in the municipality that are along the waterway where the project is proposed. The proposed amendments confine that

requirement to the area of the shore protection project. Because the area to which the accessways, restrooms and parking must be provided has been reduced in scope, these facilities must now be shown on a site plan, as required for all shore protection projects on other waterways, rather than a tax map, which may result in some additional costs. Overall, these amendments will have a positive economic impact for municipalities seeking such funding by reducing costs that would be incurred to assure access outside the area of the shore protection project and by assuring that available funding can be utilized.

Lastly, the proposed amendments to N.J.A.C. 7:7E-8.11(q) change the timing for submission to the Department of a public access plan, and Public Access Instrument, where applicable, but not the substance of the plan or instrument. This will enable an applicant for Green Acres funding for a project located along a tidal waterway to await approval of Green Acres funding prior to developing the required public access plan, and for municipalities, Public Access Instrument. As proposed, the option to delay submission of the public access plan and Public Access Instrument, where applicable, could provide an economic benefit in that the applicant does not need to incur the costs associated with preparing these documents unless they are approved for funding for a Green Acres project site.

Environmental Impact

The proposed amendments would continue to require public access when development is proposed along tidal waterways and their shores. The amendments provide exceptions to the requirement for linear access along tidal waterways for additional types of development. Specifically, alternate access can be provided for superhighways, marinas, and in instances where required because of homeland security concerns. The amendments would also change the mitigation requirement for public roadway projects resulting in loss of public access parking, increasing the distance that replacement parking could be located from the development site. Lastly, the scope of the beach access required when a municipality entered into a State Aid Agreement for a

shore protection project funding, and the timing of public access requirements for eligibility for Green Acres funding would be modified.

These amendments would not alter the provisions of the Public trust rights rule, N.J.A.C. 7:7E-8.11, that require that public accessways and public access areas located in a natural area along a tidal waterway be designed to minimize the impacts to the natural area and tidal waterway, including habitat value, vegetation and water quality. The proposed amendments also would not alter the provisions of the rule that allow for temporary closure of an area when necessary to protect endangered and threatened wildlife or vegetation species or other critical wildlife resources. Moreover, the environmental protection standards of the remaining Coastal Zone Management rules, N.J.A.C. 7:7E, would remain in effect. Thus, the proposed amendments are not expected to have either a positive or negative environmental impact.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require that State agencies which adopt, readopt or amend State regulations that exceed Federal standards or requirements include in the rulemaking document a comparison with Federal law. The Federal Coastal Zone Management Act (16 U.S.C. §§1450 et seq.) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 CFR 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. They 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 projects subject to the Public trust rights rule are conducted through a joint funding agreement between the State of New Jersey and the United States Army Corps of Engineers (Corps), and often include local governments as well. Such

projects are authorized by Congress through Federal Water Resources Development Acts, generally passed annually. In a document entitled “Water Resources Policies and Authorities: Federal Participation in Shore Protection,” released June 1989 (Corps Regulation CECW-PR Regulation No.1165-2-130, ER 1165-2-130), the Corps established standards for federal participation in shore protection, paramount among them the requirement for public use of the shore protection projects. The Corps requires that for Federal participation in any shore protection project, perpendicular accessways be provided at one-half mile intervals within the area of the project. For a project located along the Atlantic Ocean, Raritan, Sandy Hook or Delaware Bay, the adopted rule requires that perpendicular accessways be provided at one-quarter mile intervals for the entire waterway on which the project is proposed. The Department is not proposing to change the one-quarter mile interval but is proposing to change the spatial extent of the accessways to the area of the project. Since this is consistent with the federal standards as it relates to the area within which accessways must be provided, no further analysis is required.

Jobs Impact

The proposed amendments to N.J.A.C. 7:7E-8.11(f)3 provide an exception to the requirement for linear access along tidal waterways where development of or at a superhighway is proposed, but alternate access would still be required. Similarly, the proposed addition of N.J.A.C. 7:7E-8.11(f)8, 9 and 10 provides exceptions to the requirement for linear access along tidal waterways at marinas and as a result of homeland security concerns, but alternate access would still be required. The proposed amendments to N.J.A.C. 7:7E-8.11(q) change the timing for submission to the Department of a public access plan, and Public Access Instrument, where applicable, but not the substance of the plan or instrument. The proposed amendments at N.J.A.C. 7:7E-8.11(j) continue to require mitigation for loss of public access parking due to public roadway projects, although the mitigation can be further from the project location. These amendments are not expected to have an impact on jobs.

The Department is proposing to amend the standards at N.J.A.C. 7:7E-8.11(p) that pertain specifically to municipalities entering into a State Aid Agreement for a shore

protection project along the Atlantic Ocean, Raritan Bay, Sandy Hook Bay or Delaware Bay. The adopted rule requires that public access and perpendicular accessways be provided to all beaches in the municipality that are along the waterway where the project is proposed. The amendments would limit that requirement to the area of the shore protection project. The tourism industry, and associated jobs, are dependent in part on the ability of tourists to access and use tidal waterways and their shores for activities such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. Insofar as these amendments secure less public access than the adopted rule along these four waterways, there is likely to be less potential for increase in jobs related to beach access.

Agriculture Industry Impact

The proposed amendments are expected to have little to no impact on the agriculture industry, because the amendments apply specifically to marinas, superhighways, and homeland security, and to Green Acres and Shore Protection Program funding.

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 these provisions may be “small businesses” as defined in the Act. Specifically, the amendments proposed to the Public trust rights rule at N.J.A.C. 7:7E-8.11(e)8 and 9 apply to marinas, some of which would be classified as small businesses. The proposed amendments do not affect whether a project requires a coastal permit, and no new reporting or recordkeeping requirement is proposed. Under the current rules, marinas that require a coastal permit and are located on or along a tidal waterway are required to provide public access. The proposed amendments are intended to provide greater flexibility to marinas to meet the public access regulations, by recognizing that site constraints may exist that prevent a marina from providing public access along the entire tidal shore at the site, and allowing reconfiguration and enhancement of access in lieu of the linear access. The amendments reduce impacts on these small businesses and

the Department has concluded that no further exceptions for small business are appropriate.

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 State Plan policy for coastal resources contains a public access policy. This policy mandates the promotion of recreational opportunities and public access, and encouragement of tourism along the oceanfront, bayfront and rivers of the coastal area by protecting public access rights. Under the amended rules, public access will continue to be required, although the configuration of the access may vary for marinas, superhighways and where necessary to address homeland security concerns. The rules will continue to ensure that the public can reach and use Green Acres funded sites and State funded shore protection projects. By ensuring that public access is provided in development and redevelopment projects located along tidal waterways, the Public trust rights rule will promote smart growth, and the proposed amendments will continue this policy.

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

CHAPTER 7E

COASTAL ZONE MANAGEMENT RULES

7:7E-8.11 Public trust rights

(a) – (e) (No change.)

(f) The permanent on-site 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. – 2. (No change.)

3. Where development of a new, or at an existing energy facility, industrial use, port use, airport, railroad, [or] 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 i 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. – ii. (No change.)

4.– 5. (No change.)

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 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. – ii. (No change.)

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; [or]

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[.];

8. Where development at a legally existing commercial marina, including marinas operated by public agencies, commissions and authorities, is proposed and the Department determines that a linear public access area along the entire shore of the tidal waterway is not practicable based on site constraints, the linear public access that would be required in accordance with (d)1 above shall be reconfigured and enhanced to accommodate site constraints. This provision does not apply where the marina includes more than one dwelling unit, or non-marine related commercial uses, such as restaurants;

9. Where development of or at a marina is proposed and the Department determines that a fork lift, travel lift or other heavy boat moving equipment precludes a continuous linear public access area along the entire shore of the tidal waterway, the linear public access area shall follow the shortest possible alternate route around the lift or similar operation; or

10. 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) 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 i above, alternate public access of comparable use to the public shall be provided at a nearby off site location.

(g) – (i) (No change.)

(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. 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:

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 i 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. - 3. (No change.)

(k) – (o) (No change.)

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

1. (No change.)

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 [or beach nourishment] 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 [or] 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 [or] 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 [or] 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;

6. (No change.)

7. For shore protection [and beach nourishment] 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 [or] 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 ii below, and where the shore protection project is a structure, the entire beach or shore outshore of the project[, and all beaches within the municipality along the waterway on which the project occurs. If a municipality cannot obtain the required conservation restriction for all privately held beaches outside of the project area within the municipality along the waterway on which the project occurs, the shore protection or beach nourishment project can proceed only if the municipality or State has entered into condemnation or other legal proceedings to diligently obtain the necessary easements];

(2) - (3) (No change.)

ii. Immediately upon completion of [project] 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 [and to all beaches within the municipality along the waterway on which the project occurs]. 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 [project] 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[and to all beaches within the municipality along the waterway on which the project occurs]. The linear distance 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 [along the waterway on which the project occurs] 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, including beach nourishment, the public restroom facilities that are identified in the approved public access plan required in accordance with (p)1 above, for the length of the shore protection project and within one quarter mile of the shore protection project, [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, including beach nourishment, provide parking sufficient to accommodate public demand to access the shore protection project and the beach capacity of all beaches within and outshore of the shore protection project 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

vi. Immediately upon completion of [project] 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 [at each public accessway and/or public access area along the waterway on which the project occurs];

8. For shore protection [and beach nourishment] 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 [project] 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,[or nourished beach], 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 [or nourished beach] 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 [project] 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 [project] construction, including beach nourishment, provide accessways along a linear shore protection project, [or] 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;

iv. Immediately upon completion of [project] construction, including beach nourishment, provide parking sufficient to accommodate public demand to access the entire shore protection project, taking into account the availability of existing public parking; and

v. Immediately upon completion of [project] 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 [at the site of the project, except at jetties and groins that are not designed for public use];

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

10. (No change.)

(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 [4]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:

1. Submit to the Department for approval, [prior to] 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 i below.

i. The certification shall certify that, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36-1 et seq. 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;

[i] 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 1i and ii above, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36 -1 et seq. 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. 7:36-1 et seq. prior to Department approval of the public access plan and Public Access Instrument, as applicable;

Recodify existing 2. through 4. as 3. through 6. (No change in text.)

[5]6. In addition to complying with (q)1 through [4]5 above, an applicant that is a municipality shall:

[i. Prior to application for Green Acres funding for a Green Acres project site, submit to the Department for approval, a draft Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5;]

[ii.] 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

[iii] ii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance adopting the public access plan required at 1ii above and record

the Public Access Instrument approved by the Department pursuant to (q)1[i] or 2 [and 5i] above, respectively;

[6.] 7. In addition to complying with (q)1 through [4]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;

Recodify existing 7. through 9. as 8. through 10. (No change in text.)

[10]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 [8]9 above; and
- iii. All parking areas identified in (q)[11]12 below;

Recodify existing 11. and 12. as 12. and 13. (No change in text.)

(r) (No change.)

**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.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) (No change.)

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

1. – 3 (No change.)

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, [and] including beach nourishment [projects], 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. - 7 (No change.)

(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;

2. A current tax map identifying all existing and proposed restrooms and parking held by the municipality and made available to the public to access and use tidal waterways and their shores;

[2.]3. For shore protection projects, [and] including 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] site plan 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 or shore protection project for the length of the shore protection project and one-quarter mile beyond each end of the shore protection project[along the waterway on which the project occurs]. The site plan shall demonstrate [provide] that:

(1) There is at least one restroom facility every one-half mile [within the municipality] for the length of the shore protection project as measured generally parallel to the beach except in accordance with (c)[2i(4)] 3i(3) 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)]~~ (2) Each restroom facility shall be located within one-quarter mile of the landward edge of the beach, [or] dune or shore protection structure, whichever is most landward; [and]

~~[(4)]~~ (3) The one-half mile interval between restrooms required at (c)~~[2i(1)]~~ 3i(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 or shore protection structure, whichever is most landward, 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

(4) Where a shore protection project extends to or beyond a municipal boundary, a restroom facility shall be located within one-quarter mile of the municipal boundary in each municipality. 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; 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] All existing and proposed parking for the public to access the shore protection project, and where the shore protection project is a structure, the entire beach or shore for outshore of the project; and

~~[3]~~4. For shore protection projects, [and] including 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) (No change.)