

## CHAPTER 38

## ROADSIDE AND DRAINAGE MAINTENANCE

## Authority

N.J.S.A. 27:1A-5, 27:1A-6 and 27:7 et seq.

## Source and Effective Date

R.1990 d.499, effective October 15, 1990.  
See: 22 N.J.R. 2246(a), 22 N.J.R. 3237(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 38, Roadside and Drainage Maintenance, expires on October 15, 1995.

## Historical Note

Chapter 38, Roadside and Drainage Maintenance, was adopted by the Commissioner of Transportation pursuant to authority delegated at N.J.S.A. 27:7, prior to September 1, 1969.

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## SUBCHAPTER 1. RESPONSIBILITY FOR MAINTENANCE

## 16:38-1.1 Sidewalks and driveways

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

“Driveway” means access route or connection to abutting property, either residential or business, including throat or apron.

“Sidewalk” means permanent, paved, pedestrian walkways, including ramps or steps.

(b) Maintenance policy. Maintenance of sidewalks or driveways within the right-of-way limits shall be the responsibility of the owner of the abutting property regardless of the conditions of original construction; however, in the absence of a conflicting ordinance or jurisdictional agree-

ment, sidewalks within the right-of-way limits shall be accepted for maintenance by the Department of Transportation under the following conditions:

1. The sidewalk is a part of a State Highway structure or grade separation;
2. The sidewalk is not accessible to the owner of the abutting property due to control of access;
3. The Department of Transportation is the owner of the abutting property.

(c) Replacement policy. A sidewalk or driveway which is destroyed, substantially damaged, or caused to be regraded or relocated as a direct or indirect result of an operation of the Department of Transportation will, where necessary, be replaced by the Department of Transportation to the extent and within the limits of said destruction, substantial damage, or cause for regrading or relocation, regardless of ownership, conditions of original construction, or location relative to the right-of-way limits. Such replacement will be guaranteed by the Department of Transportation against defects of workmanship or material, up to a period of five years from completion of installation; however, during the five-year period responsibility for inspection and notification of defect shall rest with the abutting property owner or such other party as is responsible for the sidewalk or driveway in question.

(d) Snow removal: Owners of the real property abutting a highway, road, street or thoroughfare under State jurisdiction shall be entirely responsible for the clearing of snow and ice from all abutting sidewalks and abutting driveway cuts, openings or aprons, whether or not they are located on public or private property. No costs incurred directly or indirectly by abutting property owners or their tenants, in snow or ice clearing, shall be reimbursed by the State or any public entity for any reason, including, but not limited to, where snow or ice has been placed upon such areas as a result of the State or State contractor's snow or ice clearing operations.

Amended by R.1990 d.499, effective October 15, 1990.  
See: 22 N.J.R. 2246(a), 22 N.J.R. 3237(b).

Owners of property abutting a State highway responsible for snow removal.

## 16:38-1.2 Trees

Abutting property owners are responsible for damage done to sidewalks by root systems of trees located within designated sidewalk areas or adjacent thereto.

## 16:38-1.3 Drainage

Abutting property owners are responsible for maintaining drainage systems within the limits of their property lines, and the State is responsible for maintaining drainage systems within the right-of-way limits of State-owned lands.

**16:38-1.4 Curbs**

Abutting property owners are responsible for maintaining curbs fronting their properties, except where curbs have been constructed for the sole purpose of controlling the flow of water. The State will maintain curb returns at street intersections within State right-of-way limits.

**16:38-1.5 Litter**

Abutting property owners shall be responsible for maintaining the area fronting their property from the curb to the sidewalk in a litter-free condition.

New Rule, R.1990 d.499, effective October 15, 1990.  
See: 22 N.J.R. 2246(a), 22 N.J.R. 3237(b).

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**SUBCHAPTER 2. MAINTENANCE OF RIGHT-  
OF-WAY PRIOR TO CONSTRUCTION**

**16:38-2.1 Definition**

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

“Advance right-of-way” means right-of-way parcels acquired or being acquired prior to the start of construction.

**16:38-2.2 Responsibility**

(a) The construction and maintenance unit shall maintain this advance right-of-way so that the appearance is not objectionable and perform such work as is necessary for the health and safety of the residents of the area.

(b) Right-of-way parcel maps shall not be sent to the construction and maintenance unit after construction has started, as the contractor is required to maintain right-of-way during construction.

Amended by R.1973 d.283, effective September 27, 1973.  
See: 5 N.J.R. 203(a), 5 N.J.R. 391(a).